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# **Papua New Guinea**

## **Violence Against Women: Not Inevitable, Never Acceptable!**

### **1. Introduction**

In 1995 Papua New Guinea ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In so doing, the Government of Papua New Guinea made a commitment to ensure that the women of Papua New Guinea would not be denied their enjoyment of human rights because of gender-based discrimination. Part of this commitment includes an obligation to act with due diligence to ensure that gender-based violence against women is prevented, investigated and punished, whether the perpetrator is a State official or a private individual, and that reparation is provided to victims. A decade later, Amnesty International spoke to women throughout the country still waiting for the government to deliver on that commitment.

Although recent, comprehensive data does not exist, all available evidence and Amnesty International's own research indicate that violence against women in the home and the community is pervasive, and in some regions affects most women's lives. The threat of gender-based violence, particularly sexual violence, impacts on women's ability to move freely in the community, to use public transport, to access health and education services, and to travel to market or to the workplace. The threat and the reality of gender-based violence increase women's vulnerability to the HIV/AIDS epidemic. The threat and the reality of gender-based violence mean that fear permeates many women's existence – with the home a place of risk and not refuge. The threat and the reality of gender-based violence continue to damage the physical and mental health of women across the country who live with permanent injuries and scars, both seen and unseen.

The issue of violence against women is not new to the agenda in Papua New Guinea. Since the ground breaking research, awareness raising and legislative and policy analysis conducted under the auspices of the Law Reform Commission in the 1980s and early 1990s, there have been numerous public statements, policy papers, conferences and workshops on the subject. None the less, when Amnesty International visited three provinces of Papua New Guinea in October 2005 and spoke to women's organisations, church groups, health care professionals, government welfare officers, police, lawyers and women generally, the organisation discovered that in reality the State is doing very little to promote and fulfil the realisation of women's rights or to protect women from human rights abuses. In fact, State agents themselves are often directly implicated in perpetrating violence against women.

Amnesty International found that police and other government agencies were quick to proclaim that violence against women was a problem of enormous proportions in Papua New Guinea and were keen to share, with dismay, the latest horror story from the media about a murdered wife or gang-raped teenager. Violence against women was discussed as an inevitability, a problem which would be solved only in the very long term, if at all. However, very few government agencies demonstrated a proper understanding of their own obligations towards women in this context and most were unable to offer any evidence of sustained

activity they were undertaking which might bring about a decrease in gender-based violence either in the short or long term.

None of this is a revelation to the many local women and women's organisations within Papua New Guinea who are on the frontline of the struggle to stop violence against women. This includes women and organisations who provide temporary shelter for women escaping abusive partners, who offer para-legal advice to women attempting to obtain maintenance orders, who provide counselling, support and advice to victims of gender-based violence, who conduct training on human rights, HIV/AIDS, healthcare, small business and many subjects in between, who lobby the police to investigate incidents of sexual violence and violence within the home and who provide medical assistance to the battered, bruised and broken. When asked by Amnesty International whether they believed violence against women was wrong, and indeed a crime, these women answered with an emphatic "yes". When asked whether they believed adequate attention, funds and resources have been dedicated towards promoting respect for women's rights, protecting women from gender-based violence and providing redress, in all its forms, to women who are victims of violence, they answered with an emphatic "no". They are adamant that while the economic, social and cultural context of Papua New Guinea must inform efforts to prevent, investigate and punish violence against women, and to provide reparations to survivors and families, reference to this context should not serve as a source of excuses for the government's failure to meet its obligations to women.

Most of the women Amnesty International met do not regard themselves as human rights defenders, not least of all because they unfamiliar with the term. However, it is clear that they are motivated by a desire to promote and protect human rights. Amnesty International observed that in order to fill the vacuum left by dysfunctional government agencies, these women and the organisations they represent provide what services they can with the resources available. With no statutory mandate or secure funding, often their activities can only be ad hoc and intermittent. Further, in the absence of cooperation from the police and with no power themselves to investigate, arrest, bring to trial or punish perpetrators, by necessity, their efforts are primarily directed towards restoring temporary 'peace' to families and communities which have been divided by violence, even at the expense of pursuing justice. They know the State is failing them and female victims but have little time for concerted advocacy. Moreover, they are commonly confined to the periphery of important decision making processes and struggle to have an appropriate sense of urgency and importance attributed to the issues they seek to raise.

International standards acknowledge the expertise of women's rights organizations and call on governments to work in cooperation with them.<sup>1</sup> This does not mean that women's organizations should be left to fill the gaps when the State has failed to meet its obligations, but rather that the State should seek the advice, input and criticism of women's organizations

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<sup>1</sup> See for instance Beijing Declaration and Platform for Action, adopted by the Fourth World Conference on Women, A/CONF.177/20 (Declaration) and A/CONF.177/20/Add.1 (Platform for Action), 15 September 1995, Declaration, para. 20, Platform for Action, para. 26; UN Declaration on the Elimination of Violence Against Women, UN Doc. A/RES/48/104, adopted by the UN General Assembly on 20 December 1993, Article 4(e).

and work in partnership with them to ensure that it meets its obligations under international human rights law.

Recent history has proven in Papua New Guinea that an acknowledgement of the problem and the passing of time alone will not bring about a decrease in violence against women nor overcome the barriers to women's enjoyment of their human rights. Without monitoring and scrutiny of the government's efforts to meet its obligations under CEDAW; and without campaigning for accountability and reform when the government has failed to live up to those obligations, institutional inertia and excuses will prevail.

Against that background, in this report Amnesty International recommends general and specific measures the Government of Papua New Guinea should adopt to meet its obligation to prevent, investigate and punish gender-based violence against women and to provide redress to victims. Many of the recommendations have been made before but have not been acted upon. For that reason Amnesty International also makes recommendations about improvements the State should make to systems of accountability. Moreover the organization calls for support from the international community to be given to women and women's organizations in Papua New Guinea to assist them in adopting a rights based approach to their work, in understanding the State's obligations under domestic and international law and in devising targeted, sustained advocacy strategies designed to improve compliance with those obligations.

## **2. Background**

Papua New Guinea is situated north of Australia in the Coral Sea. It is comprised of the eastern half of the island of New Guinea and approximately 600 other islands. With a population of around 5.7 million, Papua New Guinea is the largest country in the South Pacific, both in terms of land area and population size. Its borders encompass varied and rugged terrain and the majority of the country is not accessible by road. Even between most major town centres there are no roads, and those which do exist are often in disrepair or vulnerable to attack by armed robbers.

It is difficult to generalise about the people and culture of Papua New Guinea. Over 800 languages are spoken and traditions and customs vary greatly across the country. The people of New Guinea and the adjacent islands traditionally lived in small, self regulating communities and, prior to colonization in the late nineteenth century, were not aligned with or subject to any overarching system of laws and governance. Although these communities sometimes interacted for the purposes of trade, inter-marriage and warfare, they remained largely insular.

In preparation for independence from Australia in 1975, and since that time, emphasis has been placed on forging a shared sense of national identity amongst the peoples of Papua New Guinea. Nonetheless, the primary allegiance and identity of most Papua New Guineans remains defined by their local, kin-based group, referred to as one's "wantoks".<sup>2</sup> This is not surprising in circumstances where the government and the machinery of modern statehood remain irrelevant to most people's lives. Eighty five percent of Papua New Guineans live in

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<sup>2</sup> Derived from the English "one talk".

rural areas, subsisting on agriculture, forestry, and fishing. They have little contact with or access to the police or the formal justice system and are largely beyond the reach of government services, including education and healthcare. In fact, the largest service provider in Papua New Guinea is not the State, but the Christian church. The strain on overstretched, under-resourced government services has been further exacerbated by rapid population growth, with the size of the population almost tripling since independence.

In the 2005 UNDP Human Development Index Papua New Guinea was ranked 137 from 177 countries and is the lowest ranked of any South Pacific country. A snapshot of development statistics indicates a relatively dire situation: life expectancy is just over 55 years; average adult literacy is just above 57 per cent with female adult literacy just below 51 percent; in 2002 only 5 percent of those who left school found employment in the formal sector; and Transparency International ranked Papua New Guinea 130 of 145 countries on its corruption scale, with 145 being the most corrupt.

Crime and lawlessness is perhaps the most highly publicised problem facing Papua New Guinea and it has earned the country a costly reputation for being unsafe for travel and investment. Although reliable crime statistics are not available, there is little doubt that Papua New Guinea faces an epidemic of serious violent crime, which includes robbery and armed robbery, murder, gang rape, home invasion, armed highway robbery, tribal fighting, election-related violence, and violence relating to resource development projects. Fraud, corruption and "white collar crime" are also prevalent in Papua New Guinea and undermine the ability of relevant State institutions to address the country's violent crime problem.

The causes of crime are complex, numerous and much discussed. Alcohol, drugs and the relatively recent introduction of the cash economy, with its attendant "materialism", to traditional ways of living and surviving have created an enormous strain on communities. This in turn has led to the weakening or subversion of traditional mechanisms of dispute resolution and social control. Migration to urban centres, fuelled by rural poverty, has further undermined the norms and relationships of mutual obligation which previously guided and restrained peoples' behaviour. The weak central State has been unable to proffer a functional alternative regulatory system to fill the vacuum. At the same time, new tensions and divisions have been created by uneven development and distribution of resources. Crime and violence offer an opportunity to secure an income and a share of resources in an environment where legitimate avenues for asserting rights or obtaining economic advancement are largely unavailable.

Against this background women face gender-based discrimination and violence. Traditional patriarchal customs, often distorted by changed circumstances, are invoked to justify gender discrimination and subordination. Meanwhile, the protections which at least sometimes used to accompany those customs have been eroded.<sup>3</sup> The formal justice system offers the

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<sup>3</sup> Some examples of these "protections" are discussed in McIntyre, M, "Major Law and Order Issues Affecting Women", Papua New Guinea Law and Justice Sector Program Gender Analysis, Government of Papua New Guinea in cooperation with AusAID, Port Moresby, 2003, pp. 72 – 75. Such "protections" included beliefs that women had supernatural powers which they could use to take revenge people who harmed them, beliefs that sexual intercourse with women in many circumstances could weaken a man, and the obligations men had to provide physical protection and support to their wives and children.



promise of equality, protection and redress but in practice is remote, inaccessible and ineffective. Women are as at risk of gender-based discrimination and violence as ever.

### ***The HIV/AIDS Epidemic***

Papua New Guinea is currently facing a major HIV epidemic. Estimates of the number of people infected range upwards from 80,000, representing approximately two per cent of the population. There is a reported annual increase of 15-30% in numbers infected. Girls and women are infected at a younger age than boys and men, so twice as many women are infected as men in the 15 – 29 year age group. Girls between 15 and 19 have the highest rate of HIV/AIDS in the country.<sup>4</sup> Gender inequities and the prevalence and social acceptability of violence against women, manifest in high levels of sexual violence within the home and community, have been identified amongst the major factors contributing to the rapid spread of the HIV/AIDS.<sup>5</sup>

## **3. What is Known About Violence Against Women in PNG?**

When Amnesty International spoke to gatherings of women in the Western Highlands<sup>6</sup>, the overwhelming majority of women indicated they had experienced intimate partner violence. In fact, most women appeared puzzled to be asked whether they had ever been subjected to violence by their partners, as though such an obvious fact ought to be assumed. Women at a community meeting in Angoram, East Sepik Province offered a similar response. It is no surprise therefore that healthcare and welfare service providers conveyed a sense of being overwhelmed by levels of violence against women, notwithstanding they believed only a tiny minority of cases came to their attention.

There is a general consensus that gender-based violence against women is widespread and pervasive in Papua New Guinea, however, the exact dimensions of the problem are simply not known.

### **3.1 Available Data in Papua New Guinea**

With respect to intimate partner violence, the most commonly cited data is based on research conducted by the Law Reform Commission between 1982 and 1986, and is primarily derived from a questionnaire survey completed by 1,191 men and 1,203 women, focus groups discussions, and hospital and police studies. The research covered urban elites, people living in urban squatter settlements and rural villagers from 16 of the country's 20 provinces. The research found that on average two thirds of women had been hit by their partners. Although the survey revealed little variation between socio-economic groups, there was considerable variation between provinces. Almost one hundred percent of women in two highland provinces (Chimbu and Western Highlands) reported that they had been hit by their partners,

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<sup>4</sup> "Children and HIV/AIDS in Papua New Guinea", UNICEF PNG, Port Moresby, 2005, p. 5.

<sup>5</sup> *Ibid*, p. 4.

<sup>6</sup> Amnesty International had community meetings with women in Panga, Minj and Kudjip in the Western Highlands and Mandi, Karasau Island, Angoram, Boikin and Urip in East Sepik.

while in one coastal province (Oro) and one island province (West New Britain) the figures were closer to fifty percent.<sup>7</sup>

Anecdotal evidence suggests that rates of intimate partner violence are unlikely to have decreased in the intervening decades, and some women's organisations fear they may have risen. However, it is impossible to comment confidently one way or the other, particularly with respect to any particular region or group within society.

Information on rates and patterns of sexual violence, both within the family and the community, is similarly limited. The most commonly cited data is based on research conducted by the Papua New Guinea Medical Research Institute in 1993 which found that 55 per cent of women interviewed said they had been forced into sex against their will, mostly by men known to them. Half of the married women involved in the survey said that their husbands had used beatings or threats to force them into sex. Men who participated in the same study described gang rape as a common practice and approximately 60 per cent of men interviewed indicated they had participated in rape of this sort before.<sup>8</sup> In the Papua New Guinean government's very frank initial report to the Committee on the Rights of the Child, it was stated that "young women all over the country are at high risk of rape, gang rape and other forms of violent sexual assault."<sup>9</sup> In the same report, preliminary research was referred to which found that 30 per cent of girls and women in one urban settlement had been victims of sexual violence.<sup>10</sup>

The police gather statistics on crimes which are reported to them. However, there is considerable doubt about the reliability of those statistics. A working group commissioned by the government to conduct a review of the Royal Papua New Guinea Constabulary (RPNGC) found that:

*"many members do not have a Police Note Book or pencils, pens and biros. Consequently no attempt has been made to keep any form of records. Members occasionally use a piece of paper if some is available, but record keeping is almost non-existent."*<sup>11</sup>

At any rate, police statistics do not provide much insight into the true extent of violence against women in Papua New Guinea because so few crimes, particularly crimes involving

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<sup>7</sup> For a summary of the Law Reform Commission's findings see: Papua New Guinea Law Reform Commission, "Final Report of Domestic Violence - Report No.14.", Port Moresby, 1992, p. 16. The data is based on information supplied by both husbands and wives, which, in any case, was almost entirely consistent. The data also includes information on the frequency and severity of violence between spouses and the extent to which weapons or other instrument were used.

<sup>8</sup> The data is based on a study by the National Sex and Reproduction Research Team and Carol Jenkins. The study involved 423 interviews with men and women and 61 focus groups representative of 82% of the population. The results are summarised in Bradley, C. & Kesno, J, "Family and Sexual Violence in Papua New Guinea: An Integrated Long Term Strategy. Report to the Family Violence Action Committee of the Consultative Implementation and Monitoring Council, Discussion Paper No. 84." Institute of National Affairs, Port Moresby, 2001, pp. 8, 12 -13.

<sup>9</sup> Committee on the Rights of the Child, "Consideration of Reports Submitted by State Parties Under Article 44 of the Convention - Papua New Guinea", UN Doc. CRC/C/28/Add.20, 21 July 2003, para. 172.

<sup>10</sup> *Ibid* at para. 397.

<sup>11</sup> *Report of the Royal Papua New Guinea Constabulary Administrative Review Committee to the Minister for Internal Security Hon. Bire Kimisopa*, Institute of National Affairs and the Government of Papua New Guinea, September 2004, p. 126.



gender-based violence, are reported. For example, police records indicate that there were 856 rape cases reported to police across the country in 2005 and 998 cases reported in 2004.<sup>12</sup> For a population of approximately 5.6 million people this is a concerning number, and yet this undoubtedly represents only a small fraction of the actual number of rapes which occurred during the period. Many crimes committed in Papua New Guinea, including murder, do not come to police attention because of the geographic isolation of communities, the police to population ratio, a lack of public confidence in the police and a preference amongst many members of the community to resolve matters outside the formal justice system.<sup>13</sup>

In the case of rape, the fear and shame often experienced by victims create additional barriers to reporting. For example, a community nurse in the Western Highlands told Amnesty International that women are reluctant to report a case of rape if there is only one perpetrator, rather than a group of men, because in the circumstances there may be more doubt about whether or not the victim had consented to sexual intercourse. Women who are sexually assaulted while intoxicated or engaged in social activities which might attract family disapproval, such as attending a dance or nightclub or going to a boyfriend's house, are also unlikely to report for fear that, even if believed, they will in part be blamed for the assault.<sup>14</sup> Women in the sex industry, who are often particularly vulnerable to gender-based violence, have indicated that even if they report sexual offences to police their complaints are not recorded because many police take the view that women in the sex industry "cannot be raped" or refuse to record or take action on their reports without first receiving sexual favours in return.<sup>15</sup> In such circumstances, it is hardly surprising that women do not report.

The additional problem with police statistics is that they are categorised according to the section of the Criminal Code or related law which has been breached. There are no specific domestic violence offences under the penal code and statistics recording reported assaults and other offences of violence against the person are not disaggregated to show how many involve violence between intimate partners or within the family.

Some other agencies, including hospitals, government welfare offices and NGOs who provide counselling and other forms of assistance to victims of gender-based violence are also engaged in data collection. However, Amnesty International observed that this data collection was often ad hoc and dependent on who was on duty on a particular day. Even if recorded, information was not necessary collated or shared with other agencies for the purposes of compiling statistics or informing planning.

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<sup>12</sup>"Number of rape cases falls, say police", The National Online, 28 December 2005.  
(<http://www.thenational.com.pg/1228/nation13.htm>)

<sup>13</sup> See for example: Dinnen, S, "State, Society and Governance in Melanesia Project Working Paper 01/3 Building Bridges – Law and Justice Sector Reform in Papua New Guinea", Australian National University, Canberra, 2001, and Alpers, P, "Gun Running in Papua New Guinea: From Arrows to Assault Weapons in the Southern Highlands", Small Arms Survey, June 2005, Geneva, pp. 87-88.

<sup>14</sup> Banks, C, Contextualising Sexual Violence: Rape and Carnal Knowledge in Papua New Guinea, National Research Institute, Port Moresby, 1997, p. 20. Community police women also expressed similar views in interviews with Amnesty International.

<sup>15</sup>"Making Their own Rules – Police Beatings, Rape, and Torture of Children in Papua New Guinea", Human Rights Watch, New York, September 2005, p. 43 and UN Doc. CRC/C/28/Add.20, (see note 9), at para. 397.

Amnesty International also found that the data collected by these agencies was often at odds with assumptions about the prevalence of violence against women and in fact suggested a relatively small number of cases. This is in part because most agencies only recorded the immediate problem a client presented with and/or sought assistance for, such as a custody or maintenance dispute, a medical ailment or a request for a HIV/AIDS test. Their records did not reflect pro-active questioning of clients about their experiences of gender-based violence.

Moreover, the data collected by these agencies was not designed to capture levels of violence against women. Rather, it recorded how many women and girls were able to access the services the agency provided, such as counselling. Amnesty International observed that the relatively small number of cases of violence against women recorded in agency statistics reflected a general lack of community awareness about the availability of services and difficulties in accessing those services. It also reflected the fact that in practice, as a result of staffing and resource constraints, many agencies were not able to consistently and continuously offer the services which in theory they provided.

### 3.2 Steps to Improve Data Collection

In 2001 a report was commissioned by the Family Violence Action Committee (now the Family and Sexual Violence Action Committee, FSVAC)<sup>16</sup> to provide an overview of available information on the nature, extent and causes of family and sexual violence in Papua New Guinea and of the initiatives undertaken in response. The report found:

*"Professional research has already established that the majority of women and children in PNG are the direct or indirect victims of some form of family or sexual violence. The extent of the problem is enormous, but its impact on services (police, health, legal and social) is impossible to gauge because of major defects in the routine data collection systems of these agencies... In PNG, major improvements to the data collection systems of all agencies are desperately needed, requiring specific provisions for recording the main forms of family and sexual violence. The urgent introduction of these special arrangements is justified by the scale of the problem, its serious consequences for Papua New Guinea's social and economic development, and the pressing need for national and sectorial planning to be better informed. It is important to remember that agency statistics only reflect service use, and not the prevalence of the problem in the community."<sup>17</sup>*

The report proposed an integrated long term strategy to address family and sexual violence and included an action plan to assist the FSVAC to facilitate the implementation of the strategy. Within the strategy six focus areas were identified, with focus area six being data collection. A number of goals were proposed including: developing standard methods of data collection by major service agencies, building the capacity of the FSVAC to act as a central clearing house for data on family and sexual violence; conducting formal research through

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<sup>16</sup> The Family and Sexual Violence Action Committee (FSVAC) is one of the 12 sectoral committees operating under the Consultative Implementation and Monitoring Council (CIMC), an organisation founded to facilitate dialogue between government, the private sector and the community. Accordingly, the FSVAC operates as a national coordinating and networking body which seeks to address family and sexual violence via collaborative government, private sector and community programs. The work of the FSVAC is discussed further below at 6.4.

<sup>17</sup> Bradley, C. & Kesno, J, (see note 8 ) p. 66.

existing research bodies; conducting participatory action research with communities and monitoring and evaluating interventions.<sup>18</sup>

The FSAVC has taken some steps towards the achievement of these goals. A standard data collection instrument was developed and distributed and was being trialled with NGOs who provide services to victims of violence against women when Amnesty International visited. Strong doubts have been expressed about whether the uptake of the instrument will be effective amongst staff within government agencies, who already have multiple forms to complete and who are unlikely voluntarily to complete an additional form.<sup>19</sup> However, the prospect of this standard instrument being adopted by NGOs, at least within those provinces where NGO networks are reasonably strong, appears better. A number of NGOs told Amnesty International that they now collect and send information about their work and cases to the FSVAC. This in itself is an important development, given that there has historically been a reluctance amongst agencies, both government and non-government, to share information and contacts. In the past, where statistics and information have been gathered by agencies they have often been used, at most, to report to donors, and rarely for the purpose of broader research or to support advocacy on matters of policy.

In January 2006, the FSVAC released a break down of information on the first 79 cases of family and sexual violence reported to the FSVAC by member agencies. Almost all reported cases occurred in the home. Physical violence was the most common form of violence recorded, with head injuries being the most common injury inflicted. Eighteen per cent of the assaults recorded were sexual assaults, with "persistent sexual abuse" recorded as the most common form of sexual violence.<sup>20</sup>

Another initiative which the FSVAC is hopeful can be undertaken with the support of the National Research Institute in 2006 is a repeat of the Law Reform Commission survey of the early 1980s, referred to above. It is proposed that the scope of the survey would be broadened to capture information not just concerning intimate partner violence, but also violence towards children and sexual violence more generally. For reasons discussed below, the importance of gathering this base-line data cannot be overestimated.

### **3.3 Why Data Collection Matters**

The compilation of data on the nature, extent and causes of violence against women is not merely a matter of academic interest. Without understanding when, how and why violence against women occurs it is not possible to formulate an effective response. Likewise without ongoing monitoring of the efficacy of measures adopted to address violence against women, it is not possible to understand the impact, if any, of those measures. For this reason the UN Committee on the Elimination of Discrimination Against Women has said that states should encourage the compilation of statistics of this sort.<sup>21</sup> Likewise the UN Declaration on the Elimination of Violence Against Women and the Beijing Platform for Action also call on states

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<sup>18</sup> *Ibid.*, at p. 66.

<sup>19</sup> McLeod, A, Family and Sexual Violence Action Committee Mid-Term Review, CIMC, 2004, p. 15.

<sup>20</sup> CIMC – Family and Sexual Violence Action Committee Media Release, 11 January 2006.

<sup>21</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation, violence against women, (Eleventh Session, 1992), 19 para 24(c), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 84.

to promote research and the compilation of data and statistics and to make public that information.<sup>22</sup>

As discussed above, at present Papua New Guinea is not meeting these standards.

Inadequacies in data collection have long been identified as a barrier to effective program planning in Papua New Guinea. It is not a problem unique to the issue of violence against women. The geographic isolation of many communities, poor communications infrastructure and the limited reach of government service provision, has meant that statistical data within Papua New Guinea has often been incomplete and unreliable. Even the registration of births and deaths is far from uniform.

Papua New Guinea is a country which encompasses great diversity. The structure, traditions and beliefs of communities are markedly different across the country. Likewise, lifestyles vary greatly between urban settlements and rural villages; and between areas where mining and logging activities have brought royalty payments and an influx of labour and undeveloped areas where a subsistence lifestyle continues largely uninterrupted. This diversity means that it is not possible to generalise in any simplistic way about the nature, causes and consequences of violence against women across Papua New Guinea. It also heightens the need for accurate data to support meaningful and targeted responses to violence against women which take account of different circumstances across the country.

Data collection and compilation can be an expensive exercise. Nonetheless, in a country like Papua New Guinea with limited State resources, it is particularly important to ensure that funds which are directed towards addressing violence against women are allocated as effectively as possible. Amnesty International was told many times by police officers, government welfare officers, government employees in the law and justice sector and NGOs that more funds were required to conduct "more training" or "more awareness raising". However, very rarely were those interviewed by Amnesty International able to provide information on how target audiences had been chosen for previous training or awareness raising or how past activities had helped in any way to decrease levels of violence against women or improve access to redress for victims of violence. The absence of this sort of information has the potential to result in the duplication or misdirection of resources and funds. It also contributes to the view that violence against women is a monolithic and insurmountable problem within Papua New Guinea, a characterisation which in turn contributes to institutional inertia and excuses.

#### **4. Where and How do Women Experience Violence?**

In speaking to women's organisations<sup>23</sup> and gatherings of women in Papua New Guinea<sup>24</sup> Amnesty International heard from and about women who had experienced grave gender-

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<sup>22</sup> UN Declaration on the Elimination of Violence Against Women, Article 4(k), UN Doc. A/RES/48/104, adopted by the UN General Assembly on 20 December 1993 and Beijing Platform for Action, paragraph 130.

<sup>23</sup> For a list of organisations and government agencies that Amnesty International met with please see Appendix 1.

based violence in a number of forms: a woman who had been burnt with a hot iron by her neighbours on suspicion of practicing witchcraft; a woman who had been placed alive in a grave and covered in grass because she was HIV-positive; a woman who had been raped by a group of men while walking alone in an area where tribal fighting was underway and then later severely beaten by her husband for the shame she had caused him; an eight year old school girl who had been raped by her teacher; and numerous women who had lacerations, scars, missing teeth, bruises and broken bones inflicted upon them by angry or drunken partners, often using bush knives or other conveniently located implements.

The following is only an incomplete snapshot of the type of gender-based violence women experience in Papua New Guinea. Every day the local media delivers new stories of women being subjected to violence and exploitation. The purpose of Amnesty International's visit to Papua New Guinea, however, was not to collect a litany of horror stories but rather to explore how the State and civil society are responding to gender-based violence against women. The following summary of where and how women experience such violence is therefore not intended to be a comprehensive exploration of the scope and nature of violence against women in Papua New Guinea. It is included to provide the context for an examination of the adequacy and effectiveness of State attempts to respond to violence against women.

#### **4.1 International Definitions of Violence Against Women**

The UN Declaration on the Elimination of Violence Against Women states in Article 1:

*"The term 'violence against women' means any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."*

It further states in Article 2:

*"Violence against women shall be understood to encompass, but not be limited to, the following:*

*(a) Physical, sexual or psychological violence occurring within the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;*

*(b) Physical, sexual or psychological violence occurring within the community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;*

*(c) Physical, sexual or psychological violence condoned by the State wherever it occurs."*

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<sup>24</sup> Amnesty International had community meetings with women in Panga, Minj, Kudjip in the Western Highlands and Mandi, Karasau Island, Angoram, Boikin and Urip in East Sepik.

The UN Committee on the Elimination of Discrimination against Women<sup>25</sup> stated that gender-based violence against women is violence "*directed against a woman because she is a woman or that affects women disproportionately.*"

According to Article 1(j) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:

*"Violence against women' means all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life, in peace time and during situations of armed conflicts or of war,"*<sup>26</sup>

According to Article 1 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women,

*"For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere."*<sup>27</sup>

## **4.2 Domestic Violence<sup>28</sup>**

### ***Intimate Partner Violence<sup>29</sup>***

Intimate partner violence, commonly referred to in Papua New Guinea as "wife bashing", is perhaps the most common form of domestic violence, and violence against women more generally. In some regions, particularly in the Highland areas, it is regarded as an inevitable dimension of domestic relationships and violence is considered by many to be a valid way for men to assert authority over partners who are deemed lazy, insubordinate or argumentative. Amnesty International observed that in some communities, although there was debate about the degree of violence that was acceptable between spouses or about the types of behaviour which might legitimately warrant a violent response, there did not appear to be any discussion about whether violence *per se* towards women within the home was acceptable. People expressed disapproval, although not necessarily supported by any action, towards men who they considered, severely and/or frequently beat their partners and towards men who beat their partners without cause, perhaps under the influence of drugs and alcohol.

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<sup>25</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation 19, Violence against women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 84 (1994), para. 6.

<sup>26</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, 11 July 2003, entered into force 25 November 2005.

<sup>27</sup> The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, adopted in Belém do Pará, Brasil on 9 June 1994, entered into force 5 March 1995.

<sup>28</sup> Domestic violence, also sometimes referred to as "family violence", includes intimate partner violence and violence between other family or household members. For more complete discussion of definitions see Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, UN Doc. E/CN.4/1996/53, 6 February 1996.

<sup>29</sup> Intimate partner violence is a term used throughout this report to refer to violence between partners irrespective of whether or not they are married and if they are married, irrespective of whether or not they are married according to statute or custom.



However, a more generalized “zero tolerance” opposition to violence against women in the home was rarely expressed by individuals in the communities that Amnesty International visited.

Intimate partner violence in Papua New Guinea commonly includes verbal abuse, kicking, punching, burning and cutting with bush knives. Women are also sometimes locked in their homes to prevent them from returning to their families or accessing other help. The injuries women suffer can be, and often are, serious, which accounts for why 80 – 90 per cent of injuries in women presenting to health facilities are reportedly a result of domestic violence.<sup>30</sup> Hospital and health care clinic staff<sup>31</sup> reported that they frequently treat injuries such as broken arms, facial bruises and fractures, kick marks on the back and lacerations caused by bush knives. In the most serious cases, women are killed by their partners. A member of the hospital staff in Wewak told Amnesty International that she often warns women who present with serious injuries that ‘next time’ they face a real risk of being killed, because the nature and/or severity of their injuries is such that it is more a matter of luck than intent whether their partner’s abuse results in death.

It is not uncommon for women to be brought to a health care facility by the partner who inflicted the injuries. Although regret may be expressed over the seriousness of the damage inflicted, these men often appear to have little shame for what they have done.<sup>32</sup>

### ***Sexual Violence in Intimate Relationships***

Sexual violence is also a common form of intimate partner violence in Papua New Guinea. Rape within marriage was criminalised in Papua New Guinea in 2003. This important and welcome legislative change, however, has not yet provided the impetus for social and cultural change. Many men still regard it as their prerogative to have sexual relations with their partner whenever they choose, without their wife’s views coming into play. Often traditional practices related to marriage, such as the payment of bride price, have encouraged the belief that men ‘own’ their wives. In their modern form, customs like bride price and the practice of polygamy, have provided men, who have access to cash and resources, with a license to be promiscuous and violent, often without accruing any longer term obligations to provide for the women and girls they effectively ‘purchase’ or for the children born of the union.

A lack of sexual autonomy has made women increasingly vulnerable to HIV/AIDS. Even those women who are reached by HIV/AIDS awareness and education campaigns are rarely in a position to act on the information they receive. Women repeatedly told Amnesty International that if they refused sexual intercourse with their partners or insisted on condom use they would face violence and/or desertion by their partners. One woman in Angoram

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<sup>30</sup> Mola, Dr G, “Violence Against Women: A Medical Perspective” (Power-point presentation) Department of Obstetric and Gynaecology, UPNG, Port Moresby, 2004.

<sup>31</sup> Amnesty International spoke to medical staff at Port Moresby General Hospital, Wewak Hospital, Mt Hagen Hospital, Kudjip Hospital and to nurses from health care clinics at Minj and Nine Mile and Killa Killa settlements near Port Moresby.

<sup>32</sup> Mola, Dr G, (see note 30).

reported that simply having condoms could invite suspicion of infidelity and therefore a beating, particularly if a husband felt that not all the condoms used could be accounted for.<sup>33</sup>

Women at highest risk of infection, that is those whose partners have multiple wives or travel to other regions for work, often felt in the weakest position to refuse or place conditions on sexual intercourse with their partner. A woman involved in HIV/AIDS testing, care and awareness raising in Banz told Amnesty International that when women seek a HIV/AIDS test it is often because they understand that their husbands' behaviour places them at risk. These women explain to her that they think they might require a test because their husbands have other partners or travel for work along the Highlands highway to the coastal port of Lae. When she inquires about condom use, she told Amnesty International, these women uniformly answer that they have no control over whether, when and how they have sex with their partners.

### ***Women as Perpetrators – Violence Against Husbands?***

A view commonly expressed to Amnesty International was that women in Papua New Guinea also frequently resort to or provoke violence in disputes within the family, and that this ought not be overlooked. It is true that some men in Papua New Guinea are also subjected to violence from their female partners and Amnesty International emphasises that men should be protected, in law and in practice, against intimate partner violence just as women should be, without discrimination either way. However, surveys, hospital records and police statistics indicate that this type of violence is both less common and less likely to result in serious injury. Surveys also indicate that women use violence more frequently in self-defence than in attack.<sup>34</sup>

Anecdotal evidence suggests that violence frequently occurs in Papua New Guinea in the context of disputes about allegations of infidelity or (often related) financial concerns. Women often initiate and actively pursue these disputes with their partners and may repeatedly return to the same subject notwithstanding that their partners may have reacted violently to related discussions in the past.<sup>35</sup> In many respects, this in itself is a manifestation of women's general lack of status, autonomy and choice within Papua New Guinean society. At any rate, although women may not always be passive, silent victims of intimate partner violence, it does not change the evidence, such as it is, that it is men who most commonly resort to violence in the context of domestic disputes and who most commonly inflict physical injuries on their partners. It also remains the case that women experience very high level of violence, from men.

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<sup>33</sup> Conversely other women told Amnesty International that they would not tolerate having condoms in the house or using them because they felt it would suggest permission for their husband's infidelity.

<sup>34</sup> Papua New Guinea Law Reform Commission, (see note 7), pp. 17-18. There may be a reliability problem with this data also, since men may regard being beaten by their wives as shameful and therefore not complain, or present any injuries they incur as having other causes.

<sup>35</sup> This was a common scenario relayed to Amnesty International by women in the community. These anecdotal observations are supported by the Law Reform Commission's findings (see note 7) at p. 21.

### ***Women as Perpetrators - Violence Between Co-Wives***

There is another form of domestic violence which involves women as perpetrators, which is violence between co-wives or between a man's wife and his girlfriend. Anecdotal evidence suggests violence of this kind is increasingly common. Hospital staff and welfare workers reported that they frequently deal with women whose injuries, including stab wounds, have been inflicted by other women with whom they share a common partner. Similarly, on a visit to the women's section of the Port Moresby prison Amnesty International spoke to two women serving sentences for murder and attempted murder for knife attacks on their husbands' other partners. Amnesty International was told by prison staff that approximately one third of the female prison population was serving sentences for crimes relating to attacks on women with whom they share a partner.<sup>36</sup>

At women's gatherings in the Western Highlands and East Sepik, Amnesty International observed that women were frequently more interested in discussing concerns relating to disputes with their husbands' other partners than in discussing concerns relating to the use of violence against them by their male partners. When given the opportunity to seek legal advice from a local lawyer accompanying Amnesty International, women, almost without exception, sought legal advice on how they could stop their husband seeing another woman before they sought advice on how they could prevent their husband from using violence against them. When questioned, these women, sometimes with still visible injuries inflicted by their husbands, would explain that their survival and their children's survival was contingent on their husbands' ongoing support. They therefore regarded another woman competing against them for a share of his resources as a greater and more serious threat to their survival than beatings and other abuse from their husband. Such assessments of relative prioritisation should not be mistaken for women tolerating or accepting violence from men.

## **4.3 Sexual Violence**

### ***Rape and Gang Rape***

According to UNICEF:

*"Rape [in Papua New Guinea] has become a major threat to social stability and economic development and seriously impedes the full and active participation of women and girls. Rape and sexual assault have reached epidemic levels, but the vast majority of cases are not reported."*<sup>37</sup>

According to the Government of Papua New Guinea:

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<sup>36</sup> During a visit to one state prison in the Highlands of PNG, the Fiji Women's Crisis Centre staff found that of 24 women imprisoned, 16 were incarcerated for murder of their co-wives or their husbands. Some of the women's NGOs working to end violence against women in PNG, have found that approximately 85% of the cases they tend to are related to polygamy. See: Pacific Report to the UN Special Rapporteur on Violence Against Women – Asia Pacific WLD Regional Consultations of 24 Aug 2005 at <http://www.fijiwomen.com/index.php?id=1620> and ACIL Australia Pty Ltd, "Papua New Guinea Law and Justice Baseline Survey of Community Initiatives", AusAID, Port Moresby, 1997, p. 48.

<sup>37</sup> UNICEF Papua New Guinea, (see note 4), p. 4.

*"Young women all over the country are at high risk of rape, gang rape and other forms of violent sexual assault, and the attendant fear accompanies them in many aspects of their daily life in urban and rural settings. It severely limits their rights to freedom and to assembly and their right to participate equally alongside young men in all forms of social, political and economic life."<sup>38</sup>*

In light of an increase in sexual violence, the police in the town of Lae advised women to arm themselves for protection:

*"This is so that when you are attacked, you can use the knife to protect yourself and maybe leave a mark on them so that it can help the police to identify them." .... "I'm appealing to parents not to let your daughters travel by themselves anywhere. Make sure that they are accompanied by a male relative or go in a group."<sup>39</sup>*

Quotes like these indicate just how serious the scourge of sexual violence is in Papua New Guinea. Sexual violence has become such a common occurrence in parts of the country that fear of rape and gang rape<sup>40</sup> severely circumscribes the freedom of movement of women and girls. High profile cases, such as the gang rape of 12 school girls abducted by armed men from their Highland's boarding school,<sup>41</sup> and the rape of a teenage student lured from a bus stop in Lae and then held by a group of men and repeatedly raped over the course of three days,<sup>42</sup> have led many people to believe that women and girls simply are not safe in Papua New Guinea. It is no surprise therefore that vulnerability to rape, sexual and verbal harassment from drunken youths and sexual abuse by teachers have all been identified amongst major causes for non-enrolment or school drop out of girls.<sup>43</sup>

A lot of this sexual violence is fuelled by drug and alcohol use and is opportunistic in the sense that victims are chosen by circumstance, with perpetrators seizing the chance to rape women who are alone or to whom they have unexpected access. However, research has revealed that other factors which are used to justify rape include the urge to 'teach educated or liberated women a lesson', the desire to punish a woman who has previously turned down the perpetrator's sexual advances, the acceptability of a man sharing his partner with friends,

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<sup>38</sup> CRC/C/28/Add.20, (see note 9), para 172.

<sup>39</sup> "Top cop tells girls: Arm themselves", Post Courier Online, 15 February 2006.  
(<http://www.postcourier.com.pg/20060215/wehome.htm>)

<sup>40</sup> Often locally referred to as "line-up sex". Gang rape in PNG can involve as few as two or as many as fifty perpetrators.

<sup>41</sup> "Twelve grade eight students taken from their dorm by armed men", The National Online, 11 November 2005.  
(<http://www.thenational.com.pg/1111/nation1.htm>)

<sup>42</sup> "Madang schoolgirl raped by 11 men", The National Online, 31 January 2006.  
(<http://www.thenational.com.pg/013106/nation2.htm>) These two cases have been chosen because they attracted a lot of attention in recent months. However, news articles reporting gang rapes appear regularly in national newspapers.

<sup>43</sup> Kamchedzera, G and Raman, V, "The Girl Child, Development Programming and Chained Well-being in Papua New Guinea: A HRBAP Viability Case Study", The Government of Papua New Guinea and UNICEF Papua New Guinea, Port Moresby, 2005, p. 16. (Amnesty International had access to a draft only of the report. The final report was scheduled for publication in June 2006.)

and, in the context of tribal fighting, the urge to punish or shame members of another family or clan.<sup>44</sup>

### ***Sexual Violence in the Family***

As noted in section three, surveys indicate that the majority of women who are raped in Papua New Guinea know their attacker, often it is their husband or partner or a family member. Young girls appear to be particularly vulnerable to sexual violence within the home with research revealing incest and sexual abuse by, amongst others, cousin brothers, step brothers, adoptive brothers, brothers in law, step fathers, adoptive fathers, uncles or elderly close family friends.<sup>45</sup> A policeman with the Sexual Offences Squad in Port Moresby told Amnesty International that, although the Squad used to deal more with stranger rape, nowadays the perpetrator is usually known to the victim. He reported that the most common age category for victims was now six months to ten years and that the vast majority of victims were girls.

Girls, particularly those who do not live with or are not supported by their natural parents, are at increased risk of sexual violence because they are often dependent on male relatives or patrons for food, shelter, school fees and other basic necessities.

*"So-called 'adopted' children are raised by people other than their natural parents. There are many thousands of children currently living under these ad hoc and informal adoption arrangements in PNG. Adopted female children are very much at risk in their homes, particularly when offending 'adopted' fathers, cousins, uncles or brothers feel confident that the girl is unlikely to report a sexual offence against them, or that even if she/he did, the family is most likely to conceal the offence .... Reporting to the police is a shame-filled last resort."*<sup>46</sup>

Amnesty International spoke to working mothers in Port Moresby who said they were preoccupied with concerns about the safety of their daughters left in the settlements with neighbours or extended family while they were at work. A nurse in Port Moresby told Amnesty International about a colleague, a single mother, who gently quizzed her young daughter daily on return from work to ascertain if she had been subjected to sexual abuse in her absence.

These are not the isolated views of a few over-protective mothers, they reflect heightened community fear over what is regarded as a dramatic increase in sexual violence within the family environment.<sup>47</sup> According to Ume Wainetti, the Program Coordinator of the FSVAC, the

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<sup>44</sup> ACIL Australia Pty Ltd, (see note 36), p .47, drawing on the previous work of one of that report's authors, Anou Borrey.

<sup>45</sup> HELP Resources, "A Situational Analysis of Child Abuse and the Sexual Exploitation of Children in Papua New Guinea" UNICEF Papua New Guinea, Wewak, 2005, pp. 79 – 85. (Amnesty International had access to a draft only of the report. The final report was scheduled for publication in June 2006.)

<sup>46</sup> HELP Resources, (see note 45), p. 88.

<sup>47</sup> For example see: "Judge: Children need protection", The National Online, 27 February 2006; "PNG a sick society: Baing", The National Online, 22 February 2006; "Our children: Who can be trusted", Weekend Edition Post Courier Online, 13th -15 January 2006; "Judge calls for child ombudsman to tackle widespread child abuse/neglect", The National Online, 6 December 2005; "Incest a threat to family unit", Post Courier Online, 21

cases currently grabbing newspaper headlines and stirring up debate are just the tip of the iceberg. However, she has posited that what appears as a recent increase in sexual violence, may in fact be just an increase in reporting as a result of awareness raising initiatives.<sup>48</sup>

### **Transactional Sex**

Another factor which exacerbates women's risk of being subjected to sexual violence is that many women and girls find themselves in circumstances where they must trade sex for survival. In the context of desperate poverty and limited employment opportunities, informal sex work done to make ends meet has become common practice in Papua New Guinea, where women and girls provide sex in exchange for money, food and shelter for themselves and their families.<sup>49</sup> A recent survey found that two in three women aged between 15 and 24 and two in five older women accept cash or gifts in exchange for sex.<sup>50</sup>

In these circumstances women and girls lose further control over when and how they have sexual intercourse, putting them at increased risk of HIV/AIDS and sexual violence. Life for women and girls engaged in sex industry in Papua New Guinea is highly perilous, with the risk of gang rape and other forms of violence ever present and with protection from State agencies rarely forthcoming.

Some husbands in Papua New Guinea regard their wives as a commodity that they can 'rent' to others for sexual services in order to raise funds. It has been reported that:

*"In many cases, a woman enters the sex trade when her husband offers her to another man, an arrangement that quickly proceeds to formal pimping. Many men are living off the sexual services of their wives, through which they gain access to cash and other resources that are otherwise unavailable to them."*<sup>51</sup>

Others sell their sisters and daughters in the same way. A recent UNICEF commissioned study found that commercial sexual exploitation of children, primarily girls, is a common phenomena in Papua New Guinea. Amongst the most common examples of commercial sexual exploitation of girls found in the study were:

- *"When girls are raped by a family member or a member of their adoptive family or guardians' family, but get no support from family, guardians or police to prosecute, they are sometimes trapped into a situation of repeated rape and forced prostitution by the original rapist. The rapist becomes their pimp. In such cases it is common for the victimization to be sustained through the threat of reporting to parents (where*

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November 2005; "Regional NGO report dramatic increase in child sex abuse" Post Courier Weekend Edition 18 - 20 November 2005; "Child sex abuse rife: Kidu", The National Online, 28 February 2005.

<sup>48</sup> "Rape scenario scary", The National Online, 23 February 2006.

(<http://www.thenational.com.pg/022306/letter1.htm>)

<sup>49</sup> O'Keeffe, A, Godwin, J and Moodie, R, "HIV/AIDS in the Asia Pacific Region – Analytical Report for the White Paper on Australia's Aid Program" AusAID, Canberra, 2005, p. 13.

<sup>50</sup> Hunter, S, "Families and Children Affected by HIV/AIDS and Other Vulnerable Children in Papua New Guinea - A National Situational Analysis", UNICEF Papua New Guinea, 2005, p. 23. (Amnesty International had access to a draft only of the report. The final report was scheduled for publication in June 2006.)

<sup>51</sup> Hunter, S, (see note 50), p. 19.



*they do not know and are not involved) or serious physical violence, with reference to guns, hiring of gangs etc.*

- *Girls who manage to escape and run away from a rapist in or associated with their home must find people and a place where they can get food and shelter. It is not unusual for a girl to be taken in by another household, even by a close girlfriend, only to be victimized again; either raped/and or forced to sell sex in order to contribute to the basic costs of that household. The perpetrator in such cases is often a brother, or husband of the girl or woman who took the child in. Victimisation is sustained and kept secret by threats to throw the girl out of the house and onto the streets, report to the neighbours and community or to teachers (if the girl is still at school) that she is a 'prostitute'.*
- *When a girl escapes rape or another form of sexual abuse at home, the friends who take her in might already be selling sex themselves and once settled in that household, the girl will be under some pressure to conform.*<sup>52</sup>

#### 4.4 State Violence - Police as Perpetrators

##### ***Police Rape and Sexual Abuse***

Although tasked with protecting women from violence, it is now well documented that members of the Royal Papua New Guinea Constabulary (RPNGC) are themselves often perpetrators of violence against women.

A 2005 Human Rights Watch Report documented extensive human rights violations perpetrated by police against women and children. Girls, in particular, appeared to be targeted by police for rape and sexual abuse.

*"In interviews with Human Rights Watch, girls and women told us about rapes, including pack rape, in police stations, vehicles, barracks, and other locations. In some cases, police carried out rapes in front of witnesses. Witnesses described seeing police rape girls and women vaginally and orally, sometimes using objects such as beer bottles. Girls and women who are street vendors, sex workers, and victims reporting crimes to police, as well as boys and men who engage in homosexual conduct, appear to be especially targeted."*<sup>53</sup>

In response to the Human Rights Watch report, the then Minister for Internal Security, Bire Kimisopa, conceded: *"I'm aware of instances of female offenders in custody being raped. That's something, you know, we're not proud of. That's something we need to eradicate within the PNG police force now."*<sup>54</sup>

A Government of Papua New Guinea sponsored review of policing conducted in 2004 found:

*"Discipline is in a state of almost total collapse. There is widespread misuse and abuse of Police powers throughout the country. Reports to the Committee include:*

<sup>52</sup> HELP Resources, (see note 45), pp. 87-88.

<sup>53</sup> Human Rights Watch Report, (see note 15), p. 34.

<sup>54</sup> "PNG admits police force brutality", ABC Radio Australia AM Program, 1 September 2005, available at <http://www.abc.net.au/am/content/2005/s1450950.htm>

- *rape or sexual assault, in some cases in police stations or cells.*<sup>55</sup>

Human rights violations against women by the police are not a recent phenomenon in Papua New Guinea. Dysfunctional oversight and accountability mechanisms have fostered police impunity and have allowed patterns of abuse to persist over years. A consultation with police and women in the sex industry conducted in Port Moresby in the mid-nineties revealed similar abuses to those documented in the Human Rights Watch report almost a decade later:

*" In the context of police work, both the sex workers and police have reported repeated situations in which known sex workers would be taken out of cars, drinking venues, or off the street, ordered into the police cars and taken to a police station, the police barracks, or to an uninhabited section of the city, and raped by a number of men in tandem. Practices were reported, such as calling other police on their radios and announcing that they had a 'public toilet' and inviting them to come to a particular location and join in. At the barracks, younger policemen were initiated into the practice within the police sub-culture of Port Moresby."*<sup>56</sup>

Women attempting to report crimes also face sexual harassment and rape. In a 2004 survey of community perceptions of the police, many women claimed that they feared reporting crimes because they were afraid of being asked to do sexual favours before their complaints would be acted upon, or in the worst case, they feared being raped.<sup>57</sup> In response to allegations that police sometimes sexually harass and rape female complainants, a policeman in the Western Highlands told Amnesty International: *"I've heard stories, I'm sure .. I mean I know it happens."* A general duties policewoman in Port Moresby told Amnesty International: *"It's like a habit. I won't hide it, it does happen."* She explained that *"all the women in the station work from eight to four pm and it is in the nights when things happen."* Only 5.6% of the RPNGC are women, therefore at most police stations there are no or very few police women on duty at any particular time. At night it is even less common to find policewomen on duty because family commitments and their own safety concerns dictate that women generally only work office hours.

Policewomen have also claimed that they are frequent victims of sexual harassment by other members of the RPNGC. Although an internal complaints process is in place, it has been reported that policewomen fear using this process lest a complaint invites retaliation or a charge of insubordination from their superiors.<sup>58</sup>

### ***Domestic Violence within the Police Service***

The ability of the RPNGC to offer women protection and appropriately investigate their allegations of gender-based violence is compromised when domestic violence within their own ranks is not only prevalent but is tolerated. A policewoman working for the Welfare Unit

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<sup>55</sup> Report of the RPNGC Administrative Review Committee, (see note 11), p. 38.

<sup>56</sup> Jenkins, C, "Final Report to UNAids: Police and Sex Workers in Papua New Guinea", Papua New Guinea Institute of Medical Research, Goroka, 1997, p. 7.

<sup>57</sup> MacLeod, A, "Women, Security and Poling in Melanesia", Paper presented to the Fourth Australasian Women and Policing Conference: Improving Policing for Women in the Asia Pacific Region, Darwin, 2005, quoting survey results from the RPNGC Development Project 2004.

<sup>58</sup> MacLeod, A, "Gender Analysis of Law and Justice Sector Agencies", Papua New Guinea Law and Justice Sector Program Gender Analysis, Government of Papua New Guinea in cooperation with AusAID, Port Moresby, 2003, p. 31.

of the RPNGC in Port Moresby told Amnesty International that “*the situation has gone beyond the limit. There are workshops on domestic violence, alcohol abuse and conflict resolution but they have little effect.*” The Welfare Unit of the RPNGC handles complaints of domestic violence from policemen’s wives. However, this policewoman told Amnesty International that attempts to discipline or charge police officers in relation to assaults on their wives were consistently frustrated, with a carton of beer sent to the relevant officer in charge often sufficient to ensure that no action is taken. An NGO staff member involved in providing a workshop on violence against women to policemen’s wives in Port Moresby told Amnesty International that the women who attended revealed that domestic violence was the norm in the police barracks. The private lives of police officers impact on their professional lives. Women in Papua New Guinea are entitled to ask, if police officers are willing to turn a blind eye to intimate partner violence within the police barracks or themselves use violence against their partners, how likely are they to investigate allegations of intimate partner violence received from the general public or to charge and, where appropriate, arrest perpetrators.

#### **4.5 Violence Against Women in the Community**

Violence against women in Papua New Guinea occurs against a backdrop of high levels of general violence in the community. Women suffer disproportionately as both the direct and indirect victims of this violence.<sup>59</sup>

##### ***Violent Crime***

As discussed in Section 2 above ( “background”), violent crime represents a serious threat to the welfare and development of many communities, both urban and rural, in Papua New Guinea. In the major urban centres people experience a palpable fear of crime, particularly women, who are aware that they are viewed as easier targets. The shadow cast by high levels of violent crime, and the fact that it is often accompanied by sexual violence, inhibits women from moving freely in public. It serves to isolate women in their homes, limit their participation in public life, and entrench their subordinate status by restricting their ability to access education and employment opportunities. Two female police officers told Amnesty International, for example, that they could not work at night because they could not get to and from work safely and that, even during the day, they did not consider it safe to travel on the bus wearing their police uniform. A church organisation running clinics in settlements on the outskirts of Port Moresby told Amnesty International that they had been forced to temporarily close one of their clinics and withdraw their staff because of continual threats to female nurses walking from the road to the clinic. These are just two of many examples told to Amnesty International.

A further pertinent, negative side effect of violent crime is the impact it has on notions of masculinity. Criminal gangs, which play a formative role in the lives of many young men, often reinforce concepts of masculinity which promote violence as a means of asserting

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<sup>59</sup> For example: Law and Justice Sector Working Group, “National Law and Justice Policy and Plan of Action Toward Restorative Justice,” December 1999, p. 4, where it is written: “Just as boys and men are over-represented among those involved in crime, women and children suffer disproportionately as a result.”

authority and which subsequently encourage male bonding around gang rape and other forms of violence against women.<sup>60</sup>

***Violence as a Means of Dispute Resolution or "pay back"***

With traditional mechanisms for conflict resolution weakened and little public faith in the formal justice system, recourse to violence is common in Papua New Guinea when disputes arise in schools, the workplace and in the course of wider community life.<sup>61</sup> This has resulted in a degree of tolerance for violence in the community and the legitimisation of the use of violence as a valid tool for resolving disputes, including within the home.

Moreover, some traditional approaches to dealing with perceived wrongs sanction the use of retributive violence or "pay back" to address grievances.<sup>62</sup>

There is one way particular way this affects women which warrants special mention. Often when a person within a community falls ill or dies unexpectedly, the community suspects that a curse or spell has been cast. The alleged sorcerer is identified, interrogated, tortured and often murdered in "pay back" for the harm they are thought to have inflicted. The methods of torture used included beating (often with barbed wire), breaking bones, burning with red hot metal, raping, hanging over fire, cutting body parts slowly, amputating and pulling behind vehicles. If treatments of this kind do not result in death, often the victim is then killed by being thrown over a cliff, into a river or cave; burned alive in a house fire; buried alive; beheaded; hanged; choked to death, starved; axed or electrocuted; suffocated with smoke; forced to drink petrol or hot liquid, stoned or shot.<sup>63</sup>

The victim is often elderly, with little influence and power in the community. Although both men and women are targeted, women are reportedly six times more likely to suffer violence in this way.<sup>64</sup> Few of these cases are reported to police because the attacks are generally sanctioned by the community or because people are afraid that if they speak out they too may be targeted.

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<sup>60</sup> Bradley, C. & Kesno, J, (see note 8), p. 14.

<sup>61</sup> This is confirmed by even a preliminary scan of the country's newspapers. See for example: "Armed police block off college in protest over allowances", The National Online, 4 November 2005, <http://www.thenational.com.pg/1104/nation1.htm>; "Two men killed in 'rough justice' after theft accusation on logging camp site," Post-Courier Online, 11 November 2006; and "Ear chopped off in melee", The National Online, 3 February 2006, <http://www.thenational.com.pg/020306/nation3.htm>.

There are many more examples of recourse to violence involving land owners and mining companies, land owners and illegal settlers; students and school security; and many smaller personal disputes within villages and settlements which are reported when they result in death or serious injury.

<sup>62</sup> For example see: Dinnen, S, (see note 13), p. 7. "Payback" is generally understood as a violent act carried out against a person or his or her family in retaliation for a wrong committed against another. Dinnen explains that, whereas negotiations leading to the payment of compensation or an exchange of gifts was generally used to settle disputes between members of the same community, "payback" was more likely to be employed with strangers or members of a rival group.

<sup>63</sup> "Sorcerers' buried alive, burnt, raped and stoned, says Minister", Sydney Morning Herald Online, June 19 2003. (<http://www.smh.com.au/articles/2003/06/19/1055828426206.html>) The article quotes the Minister for Community Development, Lady Carol Kidu, who had recently returned from being briefed on the topic by two doctors in the Easter Highlands.

<sup>64</sup> *Ibid.*

### ***Tribal Fighting***

In the Highlands regions, “pay back” for perceived wrongs can lead to protracted and deadly conflicts between clans, referred to as tribal fighting. In 2005, local media reported tribal fighting in at least six provinces. Fatality rates over the course of a fight can exceed 100 lives. A Law and Order Summit in Enga province found, for example, that 501 people had been killed in armed clashes between ethnic groups in the 12 months to August 2003. Establishing reliable fatality figures, however, is difficult if not impossible. The number of rapes and other offences committed is even less likely to be recorded.

Amnesty International met with a group of women forced to flee their homes in an area affected by tribal fighting in the Western Highlands. They reported that, although the fighting largely takes place between men, the negative impact on women’s lives is severe. Women are targeted by rival groups for rape and gang rape as a means of shaming or provoking the enemy and are sometimes abducted for that purpose. Their houses and gardens are burned and they are forced to flee at short notice. They are displaced from their homes and have to rely on the support of extended kin-groups. They are unable to travel to and tend their gardens and are thus unable to provide food for their families. Their displacement and dependency puts them at increased risk of violence and exploitation from those on whom they are forced to rely for shelter and food. Where a community is forced to relocate to another group’s lands for an extended period, women may be required to marry into the host community as a sign of gratitude. As a result of tribal fighting, health care, education and police services in the effected area are often disrupted, sometimes for extended periods, further isolating women from any prospect of assistance, protection or redress.

In the context of tribal fighting, it has also been reported that women are sometimes sold in exchange for guns or offered in return for the services of hired gunmen.<sup>65</sup>

## **5. What is the State Response to Violence Against Women?**

### **5.1 International Human Rights Standards and the State’s Obligations**

States’ obligations under international law are not limited to ensuring that their agents do not commit acts of violence against women; States must also take effective steps to prevent, investigate and punish such acts by private individuals or groups. States have a duty under international human rights law to employ positive measures to prevent, prohibit and punish violence against women, regardless of where it takes place and regardless of the identity of the perpetrator.

In addition, if an individual’s right has been violated, the State must ensure that the right violated is restored as far as is possible, including through appropriate reparations. This does not absolve the actual perpetrators from being prosecuted and punished, nor from being

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<sup>65</sup> Alpers, Phillip “Gun Running in Papua New Guinea: From Arrows to Assault Weapons in the Southern Highlands”, Small Arms Survey, June 2005, Geneva, pp. 95-96 and Dinnen, S and Thompson, E, “State, Society and Governance in Melanesia Discussion Paper 2004/08 – Gender and Small Arms Violence in Papua New Guinea”, Australian National University, Canberra, 2004, p. 9.

liable to civil legal procedures.

### ***Due Diligence***

The standard of "due diligence" determines the requisite level of effort that a State must employ to fulfil its responsibility to protect individuals from abuses of their rights by non-state actors. The general obligation of States to exercise due diligence was elaborated by the Human Rights Committee, the body established by the International Covenant on Civil and Political Rights to monitor its implementation by states parties. In a General Comment the Human Rights Committee stated:

*"The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."*<sup>66</sup>

A State must therefore act appropriately and effectively to prevent violence against women, and to investigate and punish such violence after it occurs. Where the State fails to do so it can itself be held responsible for the violations women have experienced. According to the UN Declaration on the Elimination of Violence against Women, states should:

*"exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons"*.<sup>67</sup>

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women states:

*"Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."*<sup>68</sup>

According to the Special Rapporteur on violence against women, its causes and consequences:

*"States must promote and protect the human rights of women and exercise due diligence:*

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<sup>66</sup> Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8.

<sup>67</sup> Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104 of 20 December 1993, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993)

<sup>68</sup> Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 84 (1994), para. 9.



- (a) To prevent, investigate and punish acts of all forms of VAW [violence against women] whether in the home, the workplace, the community or society, in custody or in situations of armed conflict;
- (b) To take all measures to empower women and strengthen their economic independence and to protect and promote the full enjoyment of all rights and fundamental freedoms;
- (c) To condemn VAW and not invoke custom, tradition or practices in the name of religion or culture to avoid their obligations to eliminate such violence;
- (d) To intensify efforts to develop and/or utilize legislative, educational, social and other measures aimed at the prevention of violence, including the dissemination of information, legal literacy campaigns and the training of legal, judicial and health personnel.<sup>69</sup>

As these quotations illustrate, 'due diligence' obligations are not merely limited to legislating against and criminalizing various forms of gender-based violence, but require that the State adopt a whole range of measures including the training of state personnel, the adoption of practical policies and mechanisms to protect women's rights, and ensuring that relevant legal mechanisms are accessible to women who have experienced any form of gender-based violence and can best serve their needs. It must also ensure that its efforts to respond to violence against women are not based on laws and policies which themselves lead to violations of human rights.

## 5.2 National Commitments, Plans and Policies

At the national level in Papua New Guinea much of the basic formal framework (discussed below) is in place for recognising the State's obligation to respect, protect, and fulfil women's human rights. However, commitments made by the Government of Papua New Guinea at the national level have rarely been matched by sustained, properly resourced implementation measures. The result is that women in Papua New Guinea have largely achieved their rights on paper, but are consistently denied the enjoyment of those rights in practice, often because of gender-based violence.

### ***The Constitution***

Consistent with article 2 of CEDAW, the principle of equality of men and women is embodied in the National Constitution of Papua New Guinea. In fact, the first clause of the Constitution reads:

*"We declare our first goal to be for every person to be dynamically involved in the process of freeing himself or herself from every form of domination or oppression so that each man or woman will have the opportunity to develop as a whole person in relationship with others."*

The second National Goal and Directive Principle in the Constitution calls for:

*"equal participation by women citizens in all political, economic, social and religious activities"*

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<sup>69</sup> Radhika Coomaraswamy, Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/2003/75, 6 January 2003, para. 85

and for:

*"recognition of the principles that a complete relationship in marriage rests on equality of rights and duties of the partners, and that responsible parenthood is based on that equality."*

Likewise section 55(1) provides:

*"Subject to this Constitution, all citizens have the same rights, privileges, obligations and duties irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex."*

With respect to all forms of violence, the preamble to the Constitution specifically provides that the people of Papua New Guinea:

*"reject violence and seek consensus as a means of solving our common problems."*

Likewise section 36(1) provides:

*"No person shall be submitted to torture (whether physical or mental), or to treatment or punishment that is cruel or otherwise inhuman, or is inconsistent with respect for the inherent dignity of the human person."*

In this way the Constitution contains a clear commitment both to gender equality, including within marriage, and to the right to live free from violence.

### ***The Work of the Law Reform Commission***

In 1982, the then Minister for Justice authorised a reference for the Papua New Guinea Law Reform Commission (LRC)<sup>70</sup> to investigate and report on domestic violence in Papua New Guinea, on the grounds that:

- Domestic violence is contrary to the principles of the Constitution; and
- The law does not enable the police and courts effectively to protect women from domestic violence.

In particular, the LRC was instructed to inquire into and report on:

- the nature and extent of domestic violence as a social problem;
- the legal remedies available for complaints of domestic violence;
- any changes to the law which may be necessary or desirable to achieve the protection of women from domestic violence;
- the steps which should be taken to bring the problem of domestic violence to public notice.

Over the following decade the LRC embarked upon a major programme of action on domestic violence. Extensive research was conducted on the nature, extent and causes of domestic violence and published in the mid-1980s. Equipped with this information, the LRC worked

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<sup>70</sup> The Papua New Guinea Law Reform Commission (LRC) is a statutory body which was established in April 1975 by the Law Reform Commission Act. It is tasked with reviewing the mostly inherited laws of [Papua New Guinea](#) and proposing reforms designed to make those laws more compatible with the needs and circumstances of the country.

with the police services to change their policies and practices; provided training and practical advice for District and Village Court magistrates, teachers, social workers, lawyers and church workers; prepared best-practice guidelines for domestic violence counselling; assisted churches and women's organisation to prepare policies and action plans on domestic violence; and combined with an NGO, known as the Women and the Law Committee, to produce a pro-active multi-media campaign designed to change attitudes towards domestic violence and to educate the public that wife-beating is a crime.

In 1992, the LRC was required to conclude its work on domestic violence. A final report was produced which documented the work that had been undertaken since the initial referral, outlined the considerable progress that had been made in reforming institutional policies and practices, and made 54 recommendations for further action. The recommendations covered five broad areas: legal reforms and actions required to strengthen the application of the criminal law and police responses; legal reform and actions required to improve other means of legal protection outside of the criminal justice system; measures required to maintain public awareness campaigns, educational programmes and professional training; measures required to improve counselling for victims and offenders; and measures required to improve services, particularly in the area of health and accommodation, for victims.

The report was presented to Parliament but neither the recommendations for legislative reform nor the recommendations for broader action were taken up by the government. Instead, government focus on domestic violence substantially decreased and the momentum for change dissipated. The progress which had been achieved was largely lost, as the police service, courts and other government agencies reverted to their old practices.

In 1999, Lady Carol Kidu, the only elected female representative in the National Parliament, initiated two consultative parliamentary workshops to review the LRC's Final Report. Since that time Lady Kidu has succeeded in introducing a number of legislative reforms which are discussed further below. Nonetheless, the majority of the LRC's recommendations are yet to be implemented.

Fourteen years after the Final Report was published the LRC's findings and recommendations remain as accurate and pertinent as ever. The potential of the wide ranging work undertaken by the LRC to bring about significant change for women appears to have been squandered. Despite the tireless work of certain individuals, such as Lady Carol Kidu, it is not apparent that the situation for women in Papua New Guinea with respect to gender-based violence is markedly different from the situation which existed before the LRC commenced its work.

### ***CEDAW and Platforms for Action***

The Government of Papua New Guinea ratified the UN Convention on the Elimination of Discrimination Against Women (CEDAW) without reservation in 1995 and there is reportedly a national implementation plan for CEDAW and an Inter-Agency Core-Committee on CEDAW.

Prior to ratifying CEDAW, the government had already adopted in 1991 a National Women's Policy,<sup>71</sup> formed an inter-agency women's advisory committee and established a Gender and Development Unit within the then Department of Finance and Planning.

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<sup>71</sup> The Women's Policy did not mention violence against women as a specific area for action.

In 1995, the government issued a 'Platform for Action: A Decade of Action for Women Towards National Unity and Sustainability' which was presented at the UN Fourth World Conference on Women in Beijing. The document specifically addressed violence against women and listed activities which would be undertaken in order to: increase community awareness of women's human rights and legal rights as contained in the Constitution and CEDAW; create increased awareness that violence is both a crime and a violation of women's human rights; develop public measures to eliminate violence against women; ensure that the laws relating to violence against women are enforced; ensure that women are able to participate in efforts to promote conditions for sustainable peace in the family and community; and advocate for the elimination of practices that discriminate against women.

The Government of Papua New Guinea has also endorsed other relevant international and regional platforms for action, including, in 1994, the Pacific Platform for Action on Women and Sustainable Development and, in 2004, the Revised Pacific Platform for Action on Advancement of Women and Gender Equality.<sup>72</sup> Both platforms committed the government to promoting the advancement of women, including by eliminating family and sexual violence.

However all of these committees, policies and platforms relating to the protection, promotion and fulfilment of women's human rights have achieved very little, other than to create an illusion of commitment and activity. The resources and political will required to give effect to CEDAW and related platforms have never been forthcoming at any level of government and little is known about their existence, particularly in the provinces.

### ***CEDAW Reporting and Implementation***

*"Currently the rights of the rural woman as enshrined in the CEDAW have attracted little programmatic attention" ... [Summary of rights listed] .... "All the rights are little known amongst Papua New Guinea's rural women, neither are the correlative duties understood at the various societal levels in the country."*<sup>73</sup>

Although Papua New Guinea signed CEDAW in 1994 and ratified the treaty in January 1995, the Government of Papua New Guinea has never submitted its initial report or subsequent periodic reports to the Committee on the Elimination of Discrimination Against Women. Contradictory information has been received over the last five years about who is responsible for completing the initial report and about the report's readiness for submission.

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<sup>72</sup> The Pacific Platform for Action (PPA) was approved at the 4th Regional Conference of Pacific Women and the 1<sup>st</sup> Pacific Ministerial Conference on Women and Sustainable Development, both held in Noumea in 1994. The PPA identified the following 13 critical areas for action specifically relevant to the advancement of women in the Pacific: 1) Mechanisms to promote the advancement of women; 2) Legal and human rights; 3) Violence against women; 4) Shared decision making; 5) Culture and the family; 6) Peace and justice; 7) Environment; 8) Indigenous people's rights; 9) Health; 10) Education and training; 11) Economic empowerment; 12) Agriculture and fishing; 13) Poverty.

In 2004, implementation of the PPA over the previous decade was reviewed at the 9th Regional Conference of Pacific Women and the 2<sup>nd</sup> Pacific Ministerial Conference on Women both held in Fiji. A revised Plan was agreed with four strategic areas of focus namely, mechanisms to promote the advancement of women, women's legal and human rights, women's access to services and economic empowerment.

<sup>73</sup> Kamchedzera, G, and Raman, V, (see note 43), p. 28.

In early 2005, the National Executive Council gave approval for the establishment of an Office for the Development of Women<sup>74</sup> which will assume responsibility as the lead agency and national coordinating body for issues relating to the implementation of CEDAW. However, at the time of writing there had been no budgetary allocation to give effect to the decision.<sup>75</sup>

Until the Office for the Development of Women becomes operational, the government agency with responsibility for implementing CEDAW appears to remain the Women's Division within the Department of Community Development. This is a relatively low priority Department with a small budgetary allocation, and the Women's Division is only one of several divisions within the Department. In Papua New Guinea's decentralized system of government, the Women's Division, which exists at national level, has little capacity to directly implement policies and programs. Staff working within the Women's Division explained that they primarily fill a policy and advisory role while programs are implemented at the provincial and district level.

However, their counterparts at provincial and district level are often allocated no program budget, notwithstanding the existence of national policies and platforms which they are tasked with implementing.

For example, the Assistant Secretary of the Community Development Division in Western Highlands Province told Amnesty International that her Division had been allocated no program budget by the Provincial Government at all, let alone a budget for programs relating to the implementation of CEDAW. The Division has an "Activities Plan", but every one of the Division's available monthly reports for the period April 2004 to April 2005 proceeds with statement: "There was nil funding for welfare activities from national/provincial government this month". Over the same period, in the section of each monthly report form where the Division is required to record whether the provincial CEDAW committee has met, the notation reads "not aware of this committee."

In November 2005, the Department of Justice and Attorney-General hosted a two day conference on CEDAW in Port Moresby with the aim of reaching agreement between government departments, NGOs and statutory organisations about how they could work together to further the implementation of the CEDAW principles. At the conference, the International Law Division of the Department of Justice and Attorney General presented a legislative review, examining what legislative reforms would be necessary to give domestic effect to CEDAW. Amnesty International was not able to obtain information about what, if any, concrete plans emerged from the conference. Although it is understood that funding continues for a CEDAW technical officer within the Department of Justice and Attorney General and that there is a technical advisory committee attached to this post.

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<sup>74</sup> The proposal had initially been to form an "Office for the Status of Women" but according to staff within the Women's Division it was decided that this title was too confrontational for Papua New Guinea.

<sup>75</sup> In March 2006 it was reported that the Minister for Community Development had established a Gender Advisor's position to provide legislative advice to Papua New Guinea's parliament. The position was described as "part of the work towards the creation of an Office for the Development of Women, which is yet to receive allocation from the budget." Radio New Zealand International, 10 March 2006. (<http://www.rnzi.com/pages/news.php?op=read&id=22745> )

### **National Council of Women**

A National Council of Women was established by legislation in 1979<sup>76</sup> and receives some funding from the National Government. However, it is independent from government and is regarded by its members as an NGO. Below the National Council of Women, there are Provincial Councils of Women and District Councils of Women. Essentially the Women's Council structure represents a hierarchical network of affiliated women's organisations which is intended to operate as a type of "official voice" for women at the various levels of government. In theory it provides a structured conduit for channelling training and information to women's organisations from the national level down to the grassroots. In turn, it also provides a structured system of representation whereby women's views can be gathered and voiced by a coordinated body. However, with very limited or no funding and support from the State, the Women's Council structure sometimes exists simply as an end in itself. A Gender Analysis conducted for the Law and Justice Sector program concluded:

*"The National Council of Women faces considerable problems such as institutional constraints, lack of resources, poor accountability, and poor communications with its regionally based executive and members."*<sup>77</sup>

Throughout its lifetime the limited institutional capacity of the National Council of Women has severely undermined its potential to operate as a genuinely representative, accountable, dynamic and effective advocate for women.

## **5.3 Criminal Justice System**

### **5.3.1 Legal Framework – Recent Amendments**

To a large extent, the criminal law provisions already in place in Papua New Guinea enable the State to prosecute and punish acts of violence against women. No distinction is made in statute between violence which occurs in the context of a family relationship and violence which occurs in the context of wider community life. For example, it is not a statutory defence to a charge of assault, for a husband to claim that he was 'chastising' or 'disciplining' his wife. Likewise, amendments to the Criminal Code, which came into effect in April 2003, reformed the definition of rape so that it includes sexual penetration without consent whether it occurs within marriage or not.<sup>78</sup> Amongst other things, the same amendments also broadened the definition of sexual penetration<sup>79</sup> and, recognising that rape is often used as a means of 'payback' against women, created an offence whereby it is a crime to order or

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<sup>76</sup> National Council of Women Incorporation Act 1979.

<sup>77</sup> Garap, S, "Gender in PNG – Program Context and Points of Entry", Papua New Guinea Law and Justice Sector Program Gender Analysis, Government of Papua New Guinea in cooperation with AusAID, Port Moresby, 2003, p. 31.

<sup>78</sup> Section 17 of the Criminal Code (Sexual Offences and Crimes Against Children) Act 2002 amending Section 347 of the Criminal Code.

<sup>79</sup> Sections 2 and 17 of the Criminal Code (Sexual Offences and Crimes Against Children) Act 2002 amending Section 6 and 347 of the Criminal Code. Previously, the definition of sexual penetration only covered vaginal intercourse using the penis. The definition now also includes the introduction by a person of his penis to the mouth or anus of another and the introduction by a person of an object or any other part of his or her body to the anus or vagina.



induce another person to commit an act of sexual violence.<sup>80</sup> A number of new crimes relating to the sexual abuse and sexual exploitation of children were also introduced.<sup>81</sup> Meanwhile, corresponding amendments to the rules of evidence and procedure abolished the requirement that there must be evidence to corroborate the victim's testimony in rape and other sexual assault cases.<sup>82</sup>

The amendments to the law were accompanied by training for members of the Sexual Offences Squad, dissemination of information leaflets produced by the Family and Sexual Violence Action Committee and other announcements in the media. The Office of the Director of Public Prosecutions has drawn up standard charge sheets to assist police in laying charges under the new provisions.

The amendments were introduced as a Private Members Bill by Lady Carol Kidu, and were drafted and passed with the assistance and lobbying of the Family and Sexual Violence Action Committee. The successful passage of the amendments through parliament represents a major achievement, particularly given that they challenge some deeply entrenched views regarding a man's assumed right to have sexual intercourse with his wife.

### **5.3.2 Police Investigations**

Sending a clear message to perpetrators and victims alike that abuses of women's human rights are not acceptable and will be dealt with effectively by the criminal law, is an important part of a state's obligation to prevent violence against women. Although appropriate criminal law provisions are largely in place, that obligation is not currently met in Papua New Guinea because the police frequently fail to investigate complaints relating to incidents of violence against women and often turn away women who have suffered violence.

#### ***Background - General Ineffectiveness of Police***

While the police services in Papua New Guinea have been particularly inadequate in responding to violence against women, it should be noted that this poor response occurs in the context of a broader failure by the RPNGC to deliver all basic policing services reliably and consistently. A 2004 government commissioned review of the RPNGC found, for example:

*"There has been a serious failure in discipline and systems that has rendered the Royal Papua New Guinea Constabulary largely ineffective. It has been powerless to deal with rising incidents of violent crime, and unprofessional and unethical acts by some of its members have caused the community and the Government to lose confidence and trust. These problems are continuing."*<sup>83</sup>

*"The police need to restore discipline, and be more accountable for their actions and the resources provided to them. Honest police are overwhelmed by lack of resources, poor*

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<sup>80</sup> Section 349B of the Criminal Code.

<sup>81</sup> Part IV, Division 2A and 2B of the Criminal Code.

<sup>82</sup> Section 352A of the Criminal Code.

<sup>83</sup> Report of the RPNGC Administrative Review Committee, (see note 11), p. 6.

*leadership, bad management, apathy, and the condoning of sometimes openly corrupt behaviour of their colleagues and superiors*<sup>84</sup>

*"The Constabulary has suffered from a lack of leadership and effective command by senior police members. Discipline has been allowed to deteriorate and there is no accountability for members to apply their training in police operations. Established processes and procedures are ignored, and equipment is lost, abused or mislaid. Commanders do not take responsibility for developing and mentoring their teams and no follow on training is identified or provided."*<sup>85</sup>

The consequence of the resulting breakdown in policing is not only that the vast majority of crimes go unreported, but that even those crimes which are reported to police are highly unlikely to be resolved by the apprehension and successful prosecution of the perpetrator. Of the minority of offenders who are arrested, many still avoid conviction because of inadequacies in police investigations.

### **Background - Limited Resources and Poor Conditions**

*"A significant gap has developed between the resources that have been provided to the Constabulary and those it needs to deliver an effective policing service. The shortfalls are not only in people but also in the lack of fundamental supplies such as paper, pencils, desks, tables, chairs, typewriters, Police Notebooks, recording systems and a telephone."*<sup>86</sup>

A lack of resources, both in terms of equipment and personnel undeniably contributes to the ineffectiveness of the police services in Papua New Guinea. While it is true that the members of the RPNGC have often misused the resources available to them and conveniently relied on resource constraints as an excuse for inaction, it is also true that there are simply not enough police personnel in Papua New Guinea<sup>87</sup> and that they do not have the equipment to allow them to be mobile and responsive. Police stations and police barracks, where most police and their families are accommodated, are in such a state of disrepair that many are hazardous to human health. Outnumbered by criminal gangs and fighting clans, under-resourced and neglected by the State, the police are themselves often the targets of violence by armed criminals seeking to evade arrest.

From the perspective of international human rights standards, however, even where police resource constraints are the reason for a failure to investigate allegations of violence against women, the State is not absolved from responsibility. States should provide women who are subject to violence with access to the mechanisms of justice, which in practice involves properly training and resourcing those agencies which are tasked with delivering justice. For example, UN General Assembly Resolution 52/86 – Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal

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<sup>84</sup> *Ibid*, p. 6.

<sup>85</sup> *Ibid*, p. 11.

<sup>86</sup> *Ibid*, p. 10.

<sup>87</sup> Despite Papua New Guinea's difficult and inaccessible terrain, the police to population ratio in Papua New Guinea is 1: 1121. The United Nations recommended ratio of police to population is 1:450. The authorised establishment of police has barely increased since 1983, even though the population has doubled in this time and crime rates have escalated. See: Report of the RPNGC Administrative Review Committee, (see note 11), pp. 40-43

Justice – urges members states, within the framework of their national legal systems, to "empower the police to respond promptly to incidents of violence against women."<sup>88</sup>

***Victims who are Dismissed and Sent Away***

In every discussion Amnesty International had with women's organisations and at every gathering of women Amnesty International attended, the organisation was told that women reporting incidents of domestic violence were still regularly sent home by police and told their problems were "family matters" or "should be dealt with by the Village Court." Many police men and women themselves conceded that this is common practice.

The testimony of Margaret (not her real name) in Angoram, East Sepik was indicative of dozens of stories that Amnesty International heard from frustrated women across the country:

*"My husband took a second wife and I had to live with them both in my house. When I came home one day and found everything in a mess, I said "this is my house and you should keep it clean".*

*My husband broke my nose and hit me with timber over the back of my head. I went to the police to tell them to arrest him – they said they would do it but they didn't.*

*Last month, my husband kicked me in the face and broke my teeth. I went to the police bleeding from my mouth and nose. They said they would go and get him and have a word with him but they have done nothing.*

*I am tired of the police –they're useless."*

A women's leader in Minj, Western Highlands echoed similar sentiments:

*" Police are also in line with bribery from the men. We have gone to the police with axe wounds and black eyes and .... Nothing. We have to pay petrol to get them to come.*

*We know it [wife bashing] is against the law. We know the law – but there is no equality. We just have to hide in the bush to give them [our husbands] time to calm down."*

The same kinds of experiences were reported again and again and were not confined to incidence of violence in the home. An NGO worker in Port Moresby told Amnesty International that women in the sex industry reporting sexual assaults against them were often dismissed by police who took the attitude that they "could not be raped". Similarly, one policeman in Mt Hagen, after describing the police station's 'model' response to women reporting sexual violence, told Amnesty International:

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<sup>88</sup> UN Doc.A/52/635 adopted without a vote on 12 December 1997, para. 8(d).

*"But there are some women who walk around town acting so tough, laughing and joking and making fun of police. Then the next day they come in and say they have been gang raped and we say look who's laughing now."*

Women have also reported that police sometimes demand sexual favours as a condition for taking action on their complaints.

Even well intentioned police officers disclosed to Amnesty International that, although they did not send women away, in cases of intimate partner violence they often acted as mediators rather than proceeding with charges. Police described how they offered advice and guidance to husbands and wives at the counter. Amnesty International was frequently told by police that if they could "sort it out" then they would leave it at that rather than commencing an investigation and laying charges. One experienced female activist from East Sepik described it as "counter counselling" and said that police commonly engaged in it.

This type of response from police is neither sanctioned by, nor consistent with, RPNGC's officially declared policies. For example, a Constabulary Standing Order on Domestic Violence issued in 1987, instructed police that domestic assaults must be treated in the same way, and with the same seriousness, as any assault. The Standing Order provides as follows:

"ASSAULT BY HUSBANDS ON WIVES

*1. All assaults are ILLEGAL.*

*An Assault by a husband on his wife is not less illegal than an assault on a stranger by another person.*

- 2. The correct action, as outlined below, will be taken by members of the Constabulary on reports of assaults of this nature.*
- 3. ....The following action will be taken every time a report is received of an assault:*
  - a. The report WILL be investigated in a proper manner.*
  - b. Charges will be laid against the offending husband if there is sufficient evidence available.*
  - c. A statement of complaint from the complainant will be recorded provided she is willing to make one. Explain to her that we can only help her by taking her husband before a court. We can only do that if she makes a written statement.*
  - d. The practice of using Section 6 of the Summary Offences Act no matter what injury is caused will cease. (This Section 6 relates to simple common assaults.)*
  - e. The correct charge, from assault, bodily harm, wounding, grievous bodily harm will be laid.*
  - f. The husband will be arrested if there is a possibility that the offence will be repeated after police have left the scene.*
  - g. If the husband is arrested AND there is sufficient evidence, he will be detained to appear before the first available court.*

- h. The member attending the complaint will NOT decide whether the assault may be excused, authorised or justified by either law or custom or if there has been provocation. That is a decision to be made by the Court.*
- i. In the more serious cases, it may be possible to proceed by using evidence other than the statement of the injured person. Each case should be decided on the evidence available and if there is any doubt, reference should be made to the Constabulary Legal Department."*

Likewise brochures produced by the RPNGC for the purposes of awareness raising contain messages such as:

*"For women in immediate danger a call to the nearest police is important for their own safety and that of their children. Women have a right to be safe and to protection under the law. You Are Important."*

And:

*"What can police do to help?"*

- Police can arrest the offender if you have been physically assaulted in or out of your home;*
- Offer reassurance and advice on aspects of the law and where you stand. Physical violence is a crime;*
- Make appropriate referrals to other agencies in the community which offer support."*

It is positive that the official RPNGC policy framework sends a message that violence against women, including violence committed in the home, is a serious criminal matter and will not be tolerated. However, until the clear gap between official policy and implementation in practice is addressed, the message will not be heard and its benefits will not be felt by women in need of police support.

### ***Incomplete and Inadequate Investigations***

Amnesty International observed that even when police did conduct investigations into allegations of violence against women, their investigations were primarily limited to collecting statements from those willing to attend the police station. Discussions with police and women's organisations confirmed that if victims or their families were not prepared to gather statements or locate witnesses and secure their attendance at the police station, then investigations often did not advance.

A staff member at the Family Support Centre in Port Moresby, for example, told Amnesty International that some police officers appeared to misunderstand the role of the Centre, which was intended as a liaison point for victims' services and not as an investigation unit. She reported that, rather than taking a statement from women reporting violence, commencing an investigation and making an arrest where appropriate, some police officers who were aware of the existence of the Centre simply sent women straight to there, advising

them that the police could not take action until they returned with a medical report and other evidence.

Other human rights advocates showed Amnesty International files they had compiled on cases of violence against women and girls brought to them by members of the community. These advocates were engaged, as far as possible, in pursuing investigations and gathering evidence themselves. They explained that the police were often unable or unwilling to undertake investigations, with the result that many cases reported to police, although not officially ignored or dismissed, went nowhere.

Police cited a lack of resources as the reason for their inability to follow up and investigate reported crimes. A member of the Sexual Offences Squad in Wewak, for example, set out for Amnesty International the Squad's investigation procedures when a sexual offence was reported. These procedures included: locating and interviewing the victim; referring the victim to hospital with appropriate forms indicating the types of tests required; locating and interviewing witnesses; and attending the scene to draw sketches and gather relevant physical evidence. However, when Amnesty International referred to the Squad's record books and inquired what steps had been taken to investigate the cases recorded over the previous days, Amnesty International was told that because no vehicle was available it had not been possible to conduct any inquiries. Amnesty International was further told that it often took several days before a vehicle became available, if at all.

At both Mt Hagen and Wewak police stations, police told Amnesty International about *cases of violence against women which had stalled because: "the victim didn't come back", "we are waiting for a witness to come in and give a statement" or "we couldn't locate the suspect."* Where crimes are reported in rural areas, which are difficult, time consuming and expensive to access, the police are even less likely to attend and conduct investigations. Members of communities outside major town centres in the Western Highlands and East Sepik told Amnesty International that the police usually asked for money to investigate cases, to cover their expenses such as food and fuel. If they cannot raise the money, then the police cannot or do not take any action.

### **5.3.3 Support for Victims and Witnesses in the Criminal Justice System**

The UN Declaration on the Elimination of All Forms of Discrimination against Women states in Article 4 (d) that: "*women who are subject to violence should be provided with access to the mechanisms of justice.*"

Where women are deterred from assisting in the investigation and prosecution of acts of gender-based violence because they fear being exposed to humiliation, further harm, or attacks on their character and credibility, they do not have effective access to justice.

Victims and witnesses who assist in the investigation and prosecution of acts of violence against women are entitled to protection and to be treated with dignity. The investigation and prosecution process should be explained to them, including their role in it. They should be kept abreast of developments in their case and of the progress of proceedings. Measures



should be taken to minimise inconvenience to them and to protect their privacy. Where necessary, steps should also be taken to ensure their safety.<sup>89</sup>

### ***Lack of Support for Women Reporting to the Police***

Despite some positive initiatives and the best efforts of certain individual policemen and women, the experience of reporting incidents of gender-based violence to police in Papua New Guinea remains intimidating and often degrading for women. Police expressed to Amnesty International great frustration caused by women who reported crimes involving family or sexual violence and then later withdrew their statements. However, with few exceptions the police demonstrated only superficial understanding of why women often behaved this way and were unable to offer any evidence of steps they were taking to support women through the criminal justice process in a way which might give more women the confidence to proceed with investigations and prosecutions.

On the contrary, Amnesty International found that most police: failed to avail themselves of information about support services in the community; failed to refer women to those services; failed to inform women about their rights and about the progress of investigations; failed to afford women any privacy or sensitivity when recording their statements and other information; failed to give consideration to the ongoing safety concerns of victims; and frequently abrogated their responsibility by placing pressure on women reporting gender-based violence to make decisions themselves about whether and what charges should be pressed.

Amnesty International was told that "victim's desks" introduced to police stations across Port Moresby have made it easier for women to report incidents of violence to the police and for police to interlink with other agencies to provide a more comprehensive response to victims of crime. However, when Amnesty International randomly visited Gerehu police station, one of nine in Port Moresby, the policewoman spoken to said that although she had once heard of the concept of a victim's desk, there was no provision for one in the station. She reported that complainants would be attended to at the front desk or in one of the staff rooms, but that there was no private space where a woman could make a complaint or give a statement uninterrupted by people coming and going. Further, she explained that if one of the five policewomen based at the station was around then female complainants would probably be referred to her, however, she reported that no women were available after 4pm. In relation to referral to other services such as counselling, the same policewoman told Amnesty International that she was not aware of any protocols and that it was up to the individual policeman or woman handling the case to make such referrals.

She recalled a case from the previous week when she had accompanied a woman, Mary (not her real name), to get help and refuge from a local NGO, the Individual and Community Rights Advocacy Forum (ICRAF). Mary had come to the station on a Friday having been badly beaten by her husband and needing somewhere to stay. The complaint was recorded by police and Amnesty International was told that charges were eventually laid. In the meantime

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<sup>89</sup>For an example of international standards relating to the treatment of victims of crime see Article 6 of the UN Declaration of the Basic Principles of Justice for Victims of Crime and Abuses of Power UN Doc. A/RES/40/34 adopted by General Assembly resolution 40/34 of 29 November 1985. See also Article 68 of the Rome Statute of the International Criminal Court, adopted on 17 July 1998 (A/CONF.183/9), entered into force 1 July 2002.

the policewoman told Mary to come back to the station on Monday because, by chance, she planned to visit ICRAF herself to seek assistance with her own domestic situation. The policewoman reported that, but for her own domestic problems, she would not have known about ICRAF or referred Mary. She highly doubted whether her colleagues would have done the same. While Mary, who also spoke to Amnesty International, was happy that she eventually received assistance, her referral to ICRAF was not particularly timely and occurred more by chance than as the result of any uniform practice or policy.

At the main police stations in Mt Hagen and Wewak, Amnesty International observed: no private space away from the public or police thoroughfares for women to make a complaint or statement; very few or no female police officers available; no standard procedures with respect to raising and addressing security concerns with victims and witnesses; no standard procedures for providing information on or referral to counselling or other services; and limited or incomplete knowledge about the availability of such services.

In the three provinces visited by Amnesty International, sexual offences were referred to and handled by the specialist Sexual Offences Squad. The purpose of the Squad was to ensure that investigations into sexual offences were consistent across the police service, of a guaranteed quality, and coordinated with other agencies, such as hospitals. While the existence of Squad personnel might have improved the quality of police investigations, they have not impacted significantly on the level of sensitivity afforded to women reporting sexual offences to police. Amnesty International's interviews with members of the Squad in Port Moresby, Mt Hagen and Wewak revealed that most police officers within the Squad have little or no training or skills in dealing with victims of sexual assault.

A case Amnesty International observed in Mt Hagen was illustrative. A 19 year old college student reported to the police station that she had just been pulled off the street and raped. Although there was a Sexual Offences Squad in Mt Hagen, her statement was taken by a policeman working in the criminal records section. No policewomen were on duty at the station. She was visibly very upset but was afforded no privacy. Her statement was taken in a room with people coming in and out as she attempted to recall what had happened. She was not told anything about the criminal investigation process, was left sitting alone for extended periods, unsure if she had finished or not and was not provided with any information about counselling or other services. With prompting, she was referred to the hospital with a form indicating what tests were required. A relative living in town was notified of what had happened and he accompanied her to the hospital. Police did not attend the hospital with her and did not give her any information about how the investigation would progress or when they would contact her again. Although she lived some hours from town and night was approaching, both the police and her male relative were content for her to catch a public bus home alone.

Despite this overall poor performance, there have been some positive initiatives designed to improve police responses to women reporting crimes of gender-based violence. In both Port Moresby, at Waigani police station, and in Wewak, at the Wewak Community Policing Resource Centre, there are community policing initiatives which are aimed, in part, at providing a more integrated and supportive response to victims of crime, particularly women. In both locations, police have developed networks with women's organisations and other

NGOs which have made it easier for cases to be referred to police and, visa versa, for police to refer women to services such as counselling or para-legal advice. For example, at the Wewak Centre, located in the grounds of the East Sepik Council of Women, crisis counselling is available on site. Unfortunately, these initiatives appear to have been approached as specialist outreach activities, and there was no evidence that they had informed broader changes in police policy, protocol and practice.

### ***Responsibility for Initiating and Maintaining Criminal Proceedings***

A problem frequently encountered in Papua New Guinea is that regardless of what laws are in place, regardless of whether police act on complaints, conduct proper investigations and lay appropriate charges, cases of violence against women often do not proceed to successful prosecution because victims and witnesses withdraw their cooperation. This often occurs either because the victim is intimidated or threatened into dropping the complaint or because there is overwhelming pressure to resolve the matter outside of the criminal justice system through the payment of compensation. Delays in the criminal justice system add to the pressure on victims and their families to resolve cases in a more timely way outside of the formal system at the community level, so that "peace can be restored" and the community can move on. A prosecutor from Mt Hagen explained:

*"The files are piling up because people don't want to proceed. Compensation has been paid so they feel that justice has been done. They forget that a crime has been committed against the law of the State."*

It is important that the views of the victim are taken into account when a decision is made about whether to prosecute a particular case. However, it is also important that it is made clear to the perpetrator and the wider community that it is the State, rather than the victim, that ultimately makes the decision about whether to proceed with the prosecution.

According to Article 7(b) of the UN General Assembly Resolution 52/86:

*"The primary responsibility for initiating prosecutions lies with prosecution authorities and does not rest with women subjected to violence."*

At present, the prevailing view in Papua New Guinea appears to be that the police and prosecution are impotent to act once a victim has "chosen" to pursue the compensation route or no longer wants to proceed for other reasons.

In the record book of the Sexual Offences Squad in Wewak, the disposition notation on many recorded cases states "settled by civil compensation". For example, an entry from January 2004, where a woman was alleged to have been gang raped by 16 people was recorded to have been settled by the payment of 600 Papua New Guinea Kina. The policeman spoken to reported that the Squad accepts compensation settlements as the effective resolution of a criminal matter because no one will cooperate with the investigation or prosecution after that point anyway. He explained:

*"If it is going to be sorted out by community leaders, we try to have a police presence there. We talk to the victims and relatives and negotiate with them. If it can be settled at the community level we leave it at that."*

When asked whether by their presence the police were in fact sending a message to the public that it was acceptable to resolve serious sexual assault cases at the community level alone, he replied:

*"The concern is that we want to see peace in the community. So it depends on the victim whether we proceed or not."*

A policeman with the Sexual Offences Squad in Port Moresby told Amnesty International:

*"When victims come here they are very sad, they tell their story. They say they want to charge the man but they say they also want compensation. We tell them to decide, if they want compensation then take that path. If they go ahead with compensation, there is no point us going ahead because they won't give evidence. If I say "This is a crime" and proceed anyway – no one will turn up."*

*A lot of families come here and say: "lock him up so that we can ask for compensation.""*

Similarly, almost all policemen and women spoken to by Amnesty International said that, having spent time in the past working on intimate partner violence cases only to have the victim withdraw her cooperation, they always asked female complainants first *"Do you really want to take action?"* or *"Are you going to go through with this because otherwise I don't want to waste my time?"* Women were in effect told that if they were prepared to endure violence against them, then it would be tolerated by State authorities.

Despite the frustration expressed by police, Amnesty International found that when victims of gender-based violence withdrew their support for an investigation or prosecution, little attempt was made by police to speak to them in private to ascertain their reasons for not wanting to proceed. Likewise, few attempts were made to discuss with victims what pressures or security risks they might face if a prosecution proceeded nor to consider ways in which appropriate support might be offered, including through the provision of police protection or if appropriate, through court protection orders. Where compensation agreements had been reached at the community level with the help of alternative dispute resolution mechanisms, it was not clarified whether the victim herself voluntarily participated in the negotiations nor whether she was satisfied with the negotiated outcome. It was rarely properly explained to victims that they had a right both to compensation *and* to expect that the perpetrator would be prosecuted and punished, and that accordingly under the Criminal Law (Compensation) Act the perpetrator could be ordered to pay compensation in addition to other punishments.<sup>90</sup>

Further, it appeared that the police and prosecution services rarely utilised, or did not utilise to maximum effect, measures available to assist them in circumventing the pressure placed on victims to withdraw their cooperation with a criminal investigation and prosecution. These measures include provisions in the Papua New Guinea Criminal Code which make it an

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<sup>90</sup> The amount, however, is capped at 5000pngk which a prosecutor in Mt Hagen reported is considerably less than the amount often negotiated in community compensation deals in the Western Highlands.

offence to corrupt a witness, to prevent a witness from attending court or to conspire to defeat justice<sup>91</sup> and powers to compel reluctant witnesses to attend court and give evidence.

Proceeding with an investigation and prosecution when there is no cooperation from the community is difficult, sometimes impossible. Nonetheless, the State has an obligation to victims of violence against women, who themselves may have little power or autonomy within the community, to clearly communicate that violence against women is a serious matter which is not, and should not, be tolerated. The State cannot meet this obligation by passively deferring to alternative dispute resolution mechanisms which prevent crimes of violence against women from being investigated, prosecuted and appropriately punished.<sup>92</sup>

### ***Compellability of Spouses***

In fairness to police and prosecutors a note must be added here about an exception to the power to compel witnesses to give evidence. Under the law in Papua New Guinea, spouses can not be compelled to give evidence against each other, except in certain criminal cases relating to the abuse of a child. This means that in a case of spousal abuse, if the victim refuses to give evidence against her husband, the court cannot force her to do so. To protect wives from undue pressure being placed on them by their husbands and to relieve wives of the burden of having to decide whether or not to give evidence, the Law Reform Commission recommended changes to the Evidence Act to make spouses compellable witnesses in cases of assault by one spouse on the other. The recommended changes were not enacted. As a result, although in theory it is the prosecution service which decides whether to proceed in a case of spousal abuse, if the evidence of the spouse who has been the victim of abuse is the key evidence, then in reality, it is the victim who determines whether or not to proceed. Amnesty International believes that, in the interests of combating impunity, the courts must be able to secure relevant evidence. Courts should not be precluded from obtaining relevant evidence from an entire class of persons because of restrictions on the compellability of spouses.

However, the compellability of witnesses is not an issue which should be viewed in isolation. The court is likely to have access to the most complete evidence when witnesses feel sufficiently secure and confident in the justice system to volunteer their cooperation. For that reason, any measures used to compel greater cooperation from victims and witnesses should

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<sup>91</sup> Sections 123, 126 and 128 of the Criminal Code of Papua New Guinea Criminal Code 1974 (Consolidated to No 12 of 1993) available at [http://www.paclii.org/pg/legis/consol\\_act/cc197494/](http://www.paclii.org/pg/legis/consol_act/cc197494/)

<sup>92</sup> On a positive note, however, in March 2006 the head of police in the town of Lae ordered his officers to arrest 6 men on rape charges, after it was reported in the national media that community leaders, at the request of the 14 year old victim's family, had purported to 'resolve' a rape case out of court in the "Melanesian way". The community leaders had reportedly ordered the five perpetrators to pay 520PNG Kina each to the victim's family. The original newspaper article, which prompted outrage from some women's organisations, suggested that police had been involved in the negotiations and that, in fact, the compensation payments were to be paid through the local police station. However, the following day, the head of police in Lae, Mr Kaubu, was quoted in the media rebuking the community leaders, stating that serious crimes such as rape must be dealt with through the courts and appealing to community leaders to work with police to find ways to reduce high levels of sexual violence. "Relatives of girl clinch cash deal with rapists", The National Online, 30 March 2006 (<http://www.thenational.com.pg/033006/nation2.htm>) and "Cash Deal Rejected", The National Online 31 March 2006. (<http://www.thenational.com.pg/033106/nation1.htm>)

only be employed as part of a broader strategy designed to create an environment in which the rights and welfare of victims and witnesses are prioritized and safeguarded.

#### ***Amendments to the Evidence Act to Assist Victims of Gender-Based Violence***

Although there are problems with the level of support provided to victims outside of the courtroom, there have at least been some positive developments with respect to the treatment of victims once they reach the witness box. Legislative reforms have been introduced to overcome some of the fear and humiliation that victims often experience when giving evidence in rape and other sexual assault cases. Amendments to the Evidence Act, which came into effect in 2003, now provide that court hearings in sexual offences cases may be closed to the public, that the victim may have a support person with her while giving evidence and that the accused is not allowed to cross-examine the victim himself. Further there are restrictions on what types of questions the victim can be asked about her prior sexual conduct and no evidence may be admitted as to her sexual reputation. In addition to these amended procedures, both the Office of the Director of Public Prosecution and the Community Justice Liaison Unit told Amnesty International that they are working on developing systems and protocols to support victims throughout the court process.

#### **5.3.4 The Duty to Protect Women from Violence – Is Reactive Work Alone Enough?**

Both of the sections immediately above deal with the response of the criminal justice sector once an act of violence against women has already occurred. However, States also have an obligation to protect women from gender-based violence before it occurs; to prevent such violence from happening. On a general level this obligation requires States to adopt measures, such as educational programs and awareness raising initiatives, which address the societal dynamics that fuel violence against women. On a more specific level it requires States to adopt targeted measures, such as deploying police at a time or place of known risk, to address particular patterns of abuse.

International human rights standards do not expect the impossible of police services. Not every time a woman's rights are abused by a non-state actor will the state have breached its duty of due diligence by failing to prevent the particular instance of gender-based abuse. It is recognised that it is not realistic to expect the police to be on hand wherever and whenever women are at risk of violence. In 1996, the then UN Special Rapporteur on violence against women explained this point:

*"Unlike for direct State action, the standard for establishing state complicity in violations committed by private actors is more relative. Complicity must be demonstrated by establishing that the State condones a pattern of abuse through pervasive non-action. Where States do not actively engage in acts of domestic violence or routinely disregard evidence of murder, rape or assault of women by their intimate partners, States generally fail to take the minimum steps necessary to protect their female citizen's rights to physical integrity and in extreme cases, to life. This sends a message that such attacks are justified and will not be*



*punished. To avoid such complicity, states must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses.*"<sup>93</sup>

More specifically, jurisprudence from the European Court of Human Rights suggests that where the authorities know or *ought to know* that a person is at real or immediate risk of grave harm, that person is entitled to expect that the authorities will take all reasonable measures available to them to avert that risk.<sup>94</sup> The Court has further explained that the test is not whether the abuse would have occurred "but for" the state's failure to act, but whether *had the state taken reasonably available measures there could have been a real prospect of altering the outcome or mitigating the harm.*"<sup>95</sup>

Contrary to this principle, the police in areas visited by Amnesty International were generally confined only to reactive work. The police failed to take pro-active steps designed to protect women from violence, including by being present and visible in places where violence was known to occur or by responding promptly to assist women in danger.

Women's organisations in all three provinces visited by Amnesty International reported that even in cases involving an imminent threat to a particular woman, it was often difficult to get a response from police. Women were often told that there were no police cars, no petrol for the cars or no police officers available. They reported that a strong relationship with a particular policeman or woman often assisted greatly to secure a response and if necessary an arrest. In the absence of such a relationship, they reported that persistent lobbying and payment for fuel and other expenses was often required. One women's organisation responsible for running a crisis centre in Wewak, told Amnesty International that the organisation often relied on the assistance of a private security firm because, unlike the police, they could be counted on to turn up when required.

Amnesty International saw and heard no evidence of broader police strategies to provide effective protection for women from violence. Members of the Sexual Offences Squads (SOS) in Port Moresby, the Western Highlands and East Sepik all told Amnesty International, for example, that they were unaware of any overarching pro-active police strategies for preventing or reducing sexual violence in their region. They all reported that their Squads had no resources to do anything other than investigate allegations reported to them at the police station, and that, as described above, even their capacity to do that was limited. They were unaware of any steps taken by general duties police, based on identified patterns of offending, to organise rosters and patrols designed to maximise the likelihood that police would be present or more readily available in areas where gender-based violence was known to occur.

One frustrated member of the SOS in Port Moresby, which together with the Western Highlands has the highest level of reported rape in the country, told Amnesty International:

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<sup>93</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/1996/53, 6 February 1996, para. 33.

<sup>94</sup> *Osman v. United Kingdom*. Application number 0023452/94, 28 October 1998, paras. 115 – 117.

<sup>95</sup> *E and Others v. United Kingdom*. Application number 33218/96, 26 November 2002, para. 99. The Court found that the UK violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits torture and inhuman or degrading treatment or punishment, as it failed to protect the applicants from abuse by their stepfather.

*"At the moment we can only be re-active. We have only one vehicle. The need for pro-active protection strategies is discussed again and again but there are no tangible plans.*

*... We do in-house programs, we tell them to organise, but it falls on deaf ears. I don't know what the priorities are. We don't have any strategies in place.*

*I do my job. I go home.*

*We need an overhaul"*

In Mt Hagen, the provincial capital of the Western Highlands, members of the SOS reported that Fridays and Mondays were particularly dangerous days for women to be in town. Men travelled in from the districts for the weekend, often consumed alcohol and marijuana and then harassed and attacked women. They told Amnesty International that a young woman alone in town was at risk of being dragged off the street and raped by men, who would claim to on-lookers that the woman was their wife. Indeed one woman was dragged off the street and raped on the Friday that Amnesty International was in that town.

Nonetheless, despite being aware that Fridays and Mondays were high risk days, there did not appear to be, and the members of the Sexual Offences Squad were not aware of, any strategy for providing additional protection on these days. Amnesty International saw no evidence on either day of measures such as regular foot patrols around the town or the stationing of additional police at markets and bus stops. Instead, male police officers congregated around the entrance to the police station, but were not visible anywhere else in town.

When there is a spike in the number of reported rape cases in a particular town, the police are often quoted in the media advising women to take care. For example the Provincial Police Commander and Assistant Commissioner Tony Wagambie was quoted in one national papers as follows:

*"I am urging the public to take care of themselves and not to take unnecessary risks by placing themselves in dangerous situations or in places where they will get into trouble because there are wild animals out there ready to prey on you."*<sup>96</sup>

Likewise, after a series of high profile rapes cases in Lae, it was reported in another national paper that the authorities had *"renewed calls for girls to be more vigilant and be more safety conscious"*. The paper stated that the City Police Chief had warned that *"young girls needed to be more careful and take extra precaution as most times rapes occur when 'women are in the wrong place'."*<sup>97</sup>

By contrast, the police are rarely quoted in the media advising women about the operational arrangements they have put in place to respond to an increased threat of sexual violence, for example, by securing public transport routes. Likewise the police are rarely quoted in the media warning men that violence against women will not be tolerated and that perpetrators will be brought before the courts to face trial.

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<sup>96</sup> "Take extra care, warns Wagambie", The National Online, 24 January 2006. (<http://www.thenational.com.pg/012406/nation12.htm>)

<sup>97</sup> "Child pack raped". 31 January 2006. Post Courier Online. (<http://www.postcourier.com.pg/20060131/tuhome.htm>)

It is important for the police services to provide women with information about heightened levels of risk in particular areas or at particular times. However, it is not appropriate for police services to effectively place the onus on women to protect themselves, with the implication that if they are subsequently subjected to violence it is their own fault for failing to adopt appropriate precautions. Any statement made by the police services should be premised on recognition of the fact that women have a right to freedom of movement and that this right is integral to their rights to participate on an equal basis with men in all aspects of public life.

### ***Community Policing***

In addition to resource constraints, one of the factors which hampers police from playing a more pro-active role in preventing violence against women in Papua New Guinea is that the information and cooperation from the community required to do so, is not necessarily forthcoming. A long history of reactive and brutal policing methods and ensuing human rights violations has led many parts of the community to fear and mistrust police.

For over a decade the RPNGC has been attempting to place an increased focus and emphasis on community policing in an effort to overcome these problems. According to the RPNGC the purpose of community policing *"is all about securing safer communities and working with communities to prevent crime. Emphasis is on empowering communities to be responsible and take local actions to prevent crime. Operational aspects include shifting from being a reactive police force to becoming proactive in community policing. The Police realize that communities are more informed and know the crime breakers in their areas."*<sup>98</sup>

Community policing projects that Amnesty International observed in both Port Moresby and Wewak have provided some positive opportunities for better networking between police and communities and between police and other government and non-government agencies. This in turn has improved the flow of information between the police and community and often allowed the police to be more responsive to community needs, particularly those of women. However, there is a great deal of uncertainty about what community policing actually entails, and clearer guidelines and safeguards are required if community policing is intended to lead to a reduction in violence against women, rather than an increase in vigilante brutality.

In Wewak, for example, community policing has involved the appointment of volunteer, auxiliary police to act as community police officers. Uniforms have been distributed and makeshift community policing posts constructed. Amnesty International was told by the Community Policing Unit in Wewak that communities chose for themselves who would become policemen and women, that no screening of candidates was conducted by the police and that there was no particular requirement for communities to choose a minimum number of women, with the result that very few women were chosen. Further Amnesty International was told by the Community Policing Unit that most volunteer community police had received little or no training, except as could be arranged on a largely ad hoc basis by local organisations. There was great uncertainty within the community and the police service about the powers and responsibilities of volunteer community police officers. There was no system

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<sup>98</sup> Comments from Adam Busil Deputy Director for Community Policing RPNGC, Summary of PNG Conflict Prevention Workshop organised by Asian South Pacific Bureau of Adult Education (ASPBAE) and Peace Foundation Melanesia 30- 31 March 2005, Port Moresby.

for monitoring their performance and, except for the fact that community police officers remained subject to the criminal law, there were no accountability mechanisms in place.

The response of the community in Wewak and surrounding areas to the proliferation of community police and community policing posts was mixed. Although many people believed the community policing initiative had improved general security in the community, Amnesty International also heard a litany of complaints about violence, brutality and excessive force employed by voluntary officers. With the exception of one female volunteer police officer, the volunteer community police that Amnesty International spoke to about violence against women, demonstrated a complete lack of knowledge about applicable laws and made it clear that they regarded their role as resolving problems within the community and not within the home. Further, in addressing problems within the community it was apparent that community police, most of whom were men, had little knowledge of the particular problems that women faced, nor did they recognise how women's lack of status and power impacted on their ability to participate equally in dispute resolution. None of the villages or settlements Amnesty International visited in East Sepik where community police were active had consulted to devise a safety strategy for women at risk of violence in the home. None of the villages or settlements had strategies for educating men and women about their rights and responsibilities, nor any clearly stated community commitment to rejecting violence against women.

In short, by appointing predominantly male auxiliary police, failing to provide them with training on women's human rights, investing them with ambiguous powers, and failing to properly monitor their activities, the police services in East Sepik appeared to have succeeded only in reinforcing existing power hierarchies in the community which, at best, failed to advance women's human rights in any meaningful way and, at worst, isolated women who were victims of gender-based violence from the forms of justice and redress only available to them within the formal justice system.

### **5.3.5 Training of Police**

Providing gender-sensitive training to police is one measure the State should adopt to ensure that women are treated respectfully and professionally by all those dealing with their complaints in the criminal justice system.

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women states in paragraph 24(b):

*"Gender sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention."*

The UN Declaration on the Elimination of Violence against Women calls on states in Article 4(i) to:

*"Take measures to ensure that law enforcement officers and public officials responsible for implementing political to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women."*

When Amnesty International asked police and other organisations what was required to improve the police service's response to violence against women - "*more training*" was the common refrain.

However, members of the RPNGC have already received or should have received a number of training modules on gender, family violence, and HIV/AIDS.<sup>99</sup> Amnesty International was shown, for example, a RPNGC national training manual on family violence and was informed by a police trainer in Mt Hagen that all members of the police service in the Western Highlands should have completed that training. As well as re-iterating police responsibilities, the manual dealt with what sort of behaviour constituted family violence and set out in detail the type of destructive impact that violence has on the family and community. The manual finishes by advising police on "things that can be done" and lists the following:

- *Taking action when a complaint is received.*
- *Communicating to members of the public wherever and whenever possible that domestic violence is unacceptable.*
- *Not ignoring acts of violence committed by fellow police officers towards their partners and/or their children.*
- *Becoming a professional role model for community members to follow.*

Much of this training has been provided as part of the RPNGC Development Project, which is primarily funded by the Australian Agency for International Development (AUSAID). During the period 2000 to 2005 AUSAID funded more than 2,000 workshops for the RPNGC.<sup>100</sup> In AusAID's 2003-2004 annual report it is claimed that the key achievements of Australian aid to the law and justice sector in Papua New Guinea during the period included:

*"improving the Royal PNG Constabulary's awareness of gender related issues in policing and law and justice by supporting implementation of the Policewomen's Network strategic plan which included gender training for police officers."*<sup>101</sup>

Members of the RPNGC have been sent overseas for training and conferences, including to the Fiji Women's Crisis Centre for month long attachments. The Ombudsman Commission has conducted a training workshop for police trainers on human rights in law enforcement, which included a section on "the rights of women in the administration of justice". Local NGOs, such as ICRAF in Port Moresby, HELP Resources in Wewak, and Save the Children PNG, have also worked with police in various capacities to provide training and conduct awareness raising on issues relevant to violence against women.

Amnesty International does not suggest that further training should not be provided. There remains a manifest need for ongoing gender-sensitive training for police in Papua New Guinea. Nonetheless, it is apparent that if training is delivered in an environment where there

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<sup>99</sup> Some recent training initiatives are summarised for example in: McLeod, A, "Cultural Impediments to Gender Reforms in the Royal Papua New Guinea Constabulary", *The Journal for Women and Policing* Issue No 16, Austral Media Group, Melbourne, 2005, pp. 41 -43.

<sup>100</sup> "Making Their own Rules – Police Beatings, Rape, and Torture of Children in Papua New Guinea", Human Rights Watch, New York, September 2005 p. 88.

<sup>101</sup> "Annual Report 2003- 2004", Australian Government AUSAID, Canberra, 2004, p. 37

is no support and mentoring for those attempting to implement the principles taught in training; where there are no consequences, disciplinary or otherwise, for those who fail to implement those principles; where there are no uniform, mandatory protocols and standing orders to reflect those principles; and where there are insufficient resources available to give effect to any procedures and techniques taught, then the training is unlikely to achieve any noticeable impact on the quality of response women receive from the police services.

### **5.3.6 Sentencing Options**

Appropriate punishments are an important part of public education, making sure that everyone appreciates the serious nature of crimes of violence against women. Disproportionately light sentences give the impression that violence against women is acceptable, and undermines the confidence of women survivors in coming forward and making complaints.

In the past, there has been concern expressed in Papua New Guinea over disproportionately light sentences for crimes involving violence against women.<sup>102</sup> However, recent sentences reported in the press indicate that where cases of gender-based violence against women do proceed through the criminal justice system to conviction, they are considered very serious. In a high profile case in January 2006, a provincial governor was sentenced to 12 years imprisonment for raping the 17 year old sister of his wife. The sentencing Judge reportedly stated that he believed the crime must be met with a "severe punishment to reflect the community's condemnation of it."<sup>103</sup> In other rape case comparable sentences have been handed down.<sup>104</sup>

A greater concern in Papua New Guinea is the limited emphasis on rehabilitation of offenders either in the context of imprisonment or in the context of community based corrections.

Amnesty International was told in meetings with the Department of Corrective Services and with Prison Fellowship that, to the extent that rehabilitation programs operate inside the prison system, they are focussed on vocational training and community re-integration, rather than behavioural or counselling programs.

### ***Alternatives to Imprisonment***

Many women expressed the view to Amnesty International that they were reluctant to "send their husbands to jail" and that this prevented them from following through on charges against their partner. There is provision in legislation for a wide range of sentencing options, and exploration of how these options might be better employed in the context of community based corrections has recently commenced. According to the Law and Justice Sector website,

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<sup>102</sup> See for example: "Judge's decision may affect my men: Inguba", The National Online, 3 March 2004, (reporting on church deacon who received a seven year suspended sentence for two counts of raping a widow.

<sup>103</sup> "PNG: Tough sentence indicates changing attitudes on rape", Pacific Beat Program, Radio Australia, 26 January 2006 and "Yali gets 12 years", Post-Courier Online, Weekend Edition 20th -22nd January 2006.

<sup>104</sup> See for example: "Manaus man gets 10 years for rape", The National Online, 2 December 2005 (<http://www.thenational.com.pg/1202/nation15.htm>); "Depraved rapist gets 19 years", Post Courier Online, 30 November 2005 (<http://www.postcourier.com.pg/20051130/wehome.htm>); "Three get 52 years for brutal rape", The National Online, 6 June 2005. (<http://www.thenational.com.pg/0606/nation9.htm>) (NB. Fifty two years was the combined total of the sentences received by three separate offenders.)



since July 2005 Community Work Orders (CWOs) have been trialled for less serious offences, which include assault, property damage and use of insulting words, in Goroka and Port Moresby. The orders have been implemented with the assistance of local NGOs.<sup>105</sup>

Where the victim's safety and views have been given due consideration, CWOs may represent an appropriate punishment in less serious cases of gender-based violence, in particular where the victim is financially dependent on the perpetrator and may suffer undue hardship if he were to be sentenced to a period of full time imprisonment. However, CWOs do not provide "rehabilitation" *per se* in that they do not necessarily require a perpetrator of gender-based violence to consider and change his attitudes or behaviour towards women. Further, if CWOs or other alternatives to imprisonment are only utilised in situations where the victim is financially dependent on the perpetrator, it creates the risk that poor women without alternative economic support, receive less effective justice than others. For this reason, the government has an obligation, not only to explore alternatives to imprisonment, but also to examine more closely the concerns which have made women so reluctant to cooperate with a process that might lead to the imprisonment of an abusive partner or family member. If the source of their concerns, for example, is the risk of destitution, the risk of retribution, or even fear of the conditions or treatment that the perpetrator will endure in prison, then the government has an obligation to address these concerns and not merely to avoid them by employing sentencing options that would not otherwise be considered appropriate.

## 5.4 Village Courts

In addition to the courts which operate within the formal justice system, 'hybrid' Village Courts also operate throughout the country. Village Courts are intended to resolve disputes arising at village level in a manner which is consistent with local customary law. Although they are local, less formal courts, Village Courts are still state courts. Village Court officials<sup>106</sup> are paid a government stipend and, while elected by their local communities, they must be officially appointed by the government. The powers and jurisdiction of the Village Courts are set out in the *Village Courts Act 1989*, which provides that the primary function of the Village Courts is to ensure peace and harmony within the community through mediation.<sup>107</sup>

The Village Courts represent the most extensive government network in the country and in many rural communities they are the closest government presence.<sup>108</sup> In 2001, it was reported that there were about eleven hundred courts, exercising jurisdiction across eighty percent of Papua New Guinea.<sup>109</sup> Of all government institutions, the Village Courts are in the best position, subject to restrictions on jurisdiction, to offer women protection from gender-based violence, to punish minor assaults against women and to order compensation be paid when women suffer violence. However, in applying customary law, the Village Courts,

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<sup>105</sup> *Community Work Orders Begin*, Press Release on PNG Law and Justice Sector website accessed on 20 March 2006.

<sup>106</sup> Village Court Official include Magistrates, Court Clerks, who keep the records of the Court, and Peace Officers, who enforce the Court's orders.

<sup>107</sup> *Village Courts Act 1989 s.52.*

<sup>108</sup> Garap, S, "Human Rights in Village Courts: the Challenges and Opportunities for Working with Village Courts", paper presented at CEDAW Conference, Port Moresby, 24-25 November 2005, in which it said, for example, that there are twice as many Village Court officials as police personnel.

<sup>109</sup> Village Court Policy 2001, p. 5.

depending on the contents of that law and how it is applied, are also in a position to discriminate against women and deny them their rights. Further, if they exceed their jurisdiction (see below), for example by mediating and 'resolving' through a compensation pact a gang-rape case, the Village Courts can and do effectively block women's access to justice.

### ***Jurisdiction***

In addition to having general jurisdiction to deal with disputes arising within the village, including those relating to bride price, custody over children and compensation claims arising from a death, Village Courts have jurisdiction to deal with minor criminal infractions including: striking another person without reasonable cause; using insulting, threatening or offensive words or conduct; causing intentional damage to property; causing a disturbance to the peace, quiet and good order of the village; drunkenness; carrying weapons so as to cause alarm; sorcery; and failing to perform customary duties or meet customary obligations.

Where a mediated settlement cannot be reached, the Village Courts may issue an order for the payment of a monetary fine or a community work order in criminal cases; and in civil cases may issue compensation orders, work orders and orders relating to custody and land use. Statutory limits are set in respect of the amount of any fine or compensation order and in relation to the length of any work order. In the event that orders are not complied with, Village Courts have the power to order a term of imprisonment, whereby the maximum length of the term ordered is determined by reference to the amount of the fine/compensation etc not paid or hours of work not completed. The total term of imprisonment ordered must not exceed six months, and the order for imprisonment has no force or effect until endorsed by a District Court Magistrate. All Village Courts decisions can be appealed to the District Court.

Village Courts also have the authority to make preventative orders. Where it appears that a dispute may cause a breach of the peace, a Village Court may, amongst other things, order a person not to prepare to fight or fight another person; make or carry offensive weapons in certain places; or do any act or thing which might aggravate the dispute or cause a breach of the peace. Failure to observe such an order may result in a fine or a term of imprisonment.

### ***Women and Village Courts***

Unfortunately, a breakdown of Village Court monitoring, accountability and review mechanisms in many provinces has meant that little is known about how women are using the Village Courts and the type of treatment and remedies they receive. In recent years, the Village Courts have been severely neglected by government. In 1995 responsibility for the administration, operation and provision of financial support for the Village Courts was devolved to provincial governments, many of which did not have the budget or capacity to assume their new responsibilities. Village Court stipends often went unpaid, and the records which Village Courts are required to keep for monitoring and supervision purposes were either not kept or not collected and reviewed in many provinces.<sup>110</sup>

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<sup>110</sup> In February 2006 it was reported that 13.5 million Kina had been approved for the back-payment of Village Court entitlement, many of which had not been paid for the period 1997 to 2004. "*Village Courts officials to*

Amnesty International spoke to staff at the Village Court Secretariat which is responsible for policy formulation, training and maintenance of performance standards in Village Courts. These are functions which were retained by the National Government. Staff at the Secretariat reported that as a result of a collapse in data collection it was not possible to say exactly how many Village Courts were operating in the country, let alone comment in more detail about the types of cases the Village Courts were dealing with or the content of their decisions.

Amnesty International heard numerous complaints from women about Village Courts officials: ignoring grievances relating to domestic violence; dealing with matters beyond their jurisdiction; ordering compensation payments to be paid to a woman's family rather than to the woman herself; and being easily and often bribed by men "who got to them first". These types of complaints have been echoed in other fora where women have claimed that the Village Courts are usually staffed exclusively by men, do not allow women equal opportunity to put their case, consistently restore 'peace and harmony' at the expense of securing for women the full enjoyment of their rights and selectively adhere to customs and values which reinforce women's subordinate status.<sup>111</sup> However, an Australian academic, who in the 1990s monitored several hundred cases before three Village Courts in the Port Moresby area, has urged caution before universally condemning the Village Courts as inherently discriminatory and gender-biased. His studies concluded that women were relatively confident and successful users of Village Courts.<sup>112</sup>

The Village Courts certainly have the *potential* to play an important part in meeting the State's due diligence obligations to protect women from violence and to provide redress when they suffer violence. However, in order to be able to assist women who are facing violence, the Village Courts first have to adopt as a starting point the principle that women are entitled not to have their enjoyment of rights and freedoms curtailed by violence. It cannot be taken for granted that this principle is accepted by Village Courts simply because it is enshrined in the Constitution or mandated by an international human rights treaty to which Papua New Guinea is a State party. It is a principle which is not reflected in the predominant practices of some regions. Further, in regions where intimate partner violence is extremely common, it is likely that some of the mostly male Village Court officials themselves use violence against their partners and that the attitudes which underlie such conduct are reflected in the manner in which they approach their Village Court duties.

Village Courts are designed to reflect and enforce the dominant values of the communities they serve. Any expectations that they might challenge and change those values to bring them into accordance with international human rights standards, particularly as they relate to women's rights both under the Constitution and CEDAW, are unrealistic in the absence of ongoing training and guidance. Clear directives are required in order to highlight the legal and practical implications of the primacy of constitutional rights and international human rights

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receive entitlements", The National Online, 6 February 2006.

(<http://www.thenational.com.pg/020606/nation10.htm>)

<sup>111</sup> See for example: Garap, S, "The Struggle of Women and Girls in Simbu Province", Development Bulletin 50, Australian National University, 1999, pp. 47-50.

<sup>112</sup> Goddard, M, "Women in Papua New Guinea's Village Courts", Discussion Paper 2004/3 State, Society and Governance in Melanesia, Research School of Pacific and Asian Studies, Australian National University, Canberra, 2005.

obligations over customary laws. Perhaps the most obvious implication is that Village Court officials should not, on the basis of custom, dismiss violence against women as acceptable or excusable and thereby refuse to exercise either their preventative or punitive jurisdiction. Likewise, another implication is that Village Court officials should not, on the basis of custom, approach violence against a woman as an offence only against her family, rather than first of all against her as an individual. Where a woman is affected by violence and compensation is ordered, the reparation should be payable to the woman affected rather than her family.

In addition to training programs, another way in which the Village Courts can be made more responsive to women is by increasing the number of women serving as Village Court Officials. Unfortunately, to date, attempts to achieve such an increase have failed to make significant inroads. In July 2000 an amendment to the *Village Court Act* was proposed by Lady Carol Kidu and passed by the National Parliament which required that at least one female Magistrate be appointed to every Village Court by 2005. However, no action was taken to give real effect to the amendment. In most areas that Amnesty International visited, women in the community reported that there were no female Village Court magistrates. In the National Capital District, of 265 Village Court officials, just 22 are women.<sup>113</sup>

### ***Village Courts, Customary Law and Discrimination Against Women***

Just as Village Courts have the potential to assist women who are confronting violence, they also have the potential to discriminate against women and entrench their subordinate status. Matters before the Village Courts are resolved through the application of customary law appropriate to the community. However, the application of customary law is subject to some limitations. According to the Papua New Guinea Constitution, to the extent that a custom is inconsistent with the Constitution or a statute or is repugnant to the general principles of humanity it shall not be applied or enforced.<sup>114</sup> Given that section 55 of the Constitution provides that *all citizens have the same rights, privileges, obligations and duties irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex*, in theory any custom which denies a woman the enjoyment of her rights on the basis of her gender should not be applied or enforced.

Customary laws vary greatly across Papua New Guinea and continue to change and evolve. There has never been an audit of customary laws designed to identify those customs which may be inconsistent with the Constitution and with Papua New Guinea's obligations under CEDAW. Some Village Court decisions affecting women have been successfully challenged in National Courts on the basis that the customary law which was applied was discriminatory and therefore inconsistent with the Constitution. For example, in 1994 the National Court ordered the release of a woman who, pursuant to a Village Court order, had been imprisoned because she entered a new relationship after her husband had died. The Court found that because the custom barring a widow from commencing another relationship did not equally apply to men, it infringed section 55 of the Constitution and therefore should not be enforced. Other cases where National Courts have intervened to overturn Village Court decisions include a case where a woman was imprisoned for failing to pay compensation for adultery. The woman concerned had entered a new relationship after having been deserted by her

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<sup>113</sup> Garap, S, (see note 108).

<sup>114</sup> Constitution of Papua New Guinea Schedule 2.1(2)

husband whom she had not heard from for more than five years. The proceedings in the Village Court were brought by her husband's family. A further case involved a woman who had left her husband and, in addition to having to repay bride price, was also ordered to pay compensation. Having failed to pay she had been imprisoned.<sup>115</sup>

It is highly unlikely that these are isolated cases. Some traditions and customs serve and protect women, but others inevitably reflect traditional attitudes that women are subordinate to men and have stereotyped roles. CEDAW places an obligation on the Government of Papua New Guinea to identify cultural practices which discriminate against women and to change or eradicate them. Specifically Article 2(f) states that:

*"States parties condemn discrimination against women in all its forms, agree to pursue, by all appropriate means and without delay, a policy of eliminating discrimination against women, and to this end, undertake:*

*(f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."*

The same point is made specifically with regard to violence against women in Article 4 of the UN Declaration on the Elimination of Violence against Women:

*"States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination."*

Simply allowing a right to challenge Village Court decisions in higher courts is not sufficient to meet this obligation, particularly when access to higher courts is limited and great expense and time is associated with invoking their jurisdiction. A more proactive approach to reviewing and, if necessary, reforming customary laws and practices is required.

For example, in many parts of the country bride price is paid to secure a marriage. There is variation between regions as to: the amount paid; to whom it is paid; what implications it has for future relations between spouses and their families; what implications it has for issues relating to the children of the marriage; and the circumstances under which it must be refunded. Irrespective of what its traditional purpose may have been, in recent decades the payment of bride price has consistently been identified as a contributing factor to domestic violence.<sup>116</sup> It is a common belief that with the payment of bride price, women are effectively purchased by their husbands who are therefore entitled to control and 'discipline' their wives as they think necessary. Women commonly expressed the view to Amnesty International that it was difficult for some women to leave abusive relationships for fear that the bride price would have to be repaid, something which their families may be unable or unwilling to do.

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<sup>115</sup> Jessep. O, "Customary Family Law and Human Rights in PNG", Reform Issue 80 Autumn 2002, pp. 26-30 and 72. As noted above a Village Court order of imprisonment does not have force and effect until endorsed by a District Court Magistrate. However, once a Village Court has ordered a term of imprisonment, a person can be held in custody pending the opportunity to bring him or her and the order for imprisonment before a District Court Magistrate. This is supposed to occur as soon as practicable. In the cases listed above it is unclear from the National Court's judgements whether the initial Village Court imprisonment order was endorsed or not.

<sup>116</sup> See for example: Papua New Guinea Law Reform Commission (see note 7), pp. 121 and 125.

These matters have never been addressed by the government, either through legislation or other means. Occasional cases involving bride price present themselves to higher courts for review. However, in the meantime it is unknown how often Village Courts order the repayment of bride price when a woman leaves a relationship in which she has suffered violence, let alone how many women remain in relationships of violence because they are aware of the impossibility or hardship of making such a repayment and the Village Courts' policy of imposing it.

### ***Exceeding the Jurisdiction***

Village Courts have limited jurisdiction as set out above. However, anecdotal evidence suggests that many Village Courts exceed their jurisdiction and dispose of serious matters, often involving violence against women. The result is that serious criminal cases are "resolved" with the payment of compensation, the burden of which is not necessarily borne by the perpetrator and the benefit of which is rarely received by the victim. While temporarily "peace and harmony" may be restored to the community, the process involves neither effective punishment of the perpetrator nor reparation for the victim. This does not meet the State's due diligence obligations. However, to the extent that this occurs, the fault does not necessarily lie with the Village Courts.

Firstly, not every matter "resolved" by way of compensation involves the Village Courts. Often informal negotiations between family or community leaders precede any application for assistance from the Village Courts. If matters can be agreed between the parties, then the Village Courts may not be involved in sanctioning the compensation agreement.

Secondly, to the extent that serious criminal matters are resolved at Village Court level this is a reflection more of the failure of the formal justice system than of the Village Courts themselves. Rather than usurping the rightful authority of the formal justice system, Village Courts often fill the void created by a remote and ineffective police service and a costly, backlogged formal judicial system. Village Court magistrates often exceed their jurisdiction because pressure from the community to restore peace and harmony in a timely way compels them to do so or because, like the community, they are unaware of the limits of their jurisdiction. Either way, Village Courts cannot exceed their jurisdiction without the complicity of the formal justice system. Proceedings in excess of jurisdiction in the Village Courts do not bar criminal prosecution. If the community regards a matter as having been finally resolved at the Village Court level, then it may make it difficult to secure their cooperation in any future investigation and prosecution. However, it is a matter for the State to provide an accessible, independent, fair and efficient formal justice system, to educate people about its role and function, to restore their confidence in it and, if necessary and appropriate, compel their cooperation.

## **5. 6 Civil Remedies**

As experience in countries around the world has demonstrated, the criminal law is not enough on its own to protect women. Criminal penalties can only lead to prison, fines or community sentences. Frequently women and their children need civil remedies, such as restraining, or protection orders - orders barring violent men from the home or orders requiring men not to undertake any form of contact with a particular woman. These may be



necessary to create a safe space for women and children to recover and for them to be sure that violence will not continue.

The UN Special Rapporteur on violence against women has observed that:

*"The ideal legislation with regard to domestic violence would be one that combines both criminal and civil remedies. [...] Civil remedies are essential; the protection order which forbids the offender from having contact with the victim and protects her home and family from the perpetrator is an important weapon in the arsenal used to fight domestic violence."<sup>117</sup>*

In addition to the preventative orders that Village Courts may issue, a person in Papua New Guinea who has been threatened with violence by another can petition the District Courts to require that other person to enter a "good behaviour bond". Effectively a good behaviour bond is an enforceable undertaking to be of good behaviour or to keep the peace. The good behaviour bond provisions were not specifically designed to deal with domestic violence and the Law Reform Commission documented many inadequacies with their operation, including the lack of provision for emergency orders and the absence of clear consequences for breach of an order, other than the possible forfeiture of a surety. The Law Reform Commission proposed an alternative and clearer system of protection orders and drafted an amendment to the District Court Act accordingly.<sup>118</sup> However, like the Commission's other recommendations it was not acted upon.

Despite the deficiencies of good behaviour bonds, women's organisations, at least in urban areas, reported that they were still a useful measure to have available when women came seeking advice and assistance. They reported that the bonds, commonly referred to anyway as "protection orders", were not necessarily strictly enforced but, nonetheless, were useful because they allowed women to call upon the assistance of an outside authority, without requiring police involvement or without risking sending their husbands to jail. The feedback given to Amnesty International, particularly in Port Moresby, was that the orders were often used as a "wake up call to husbands" who were generally shocked to be summonsed to court, having never had their behaviour challenged or questioned before. While this has its own risks, in that it may prompt further violence, women's organisations expressed the view that once a woman obtained an order it was easier to secure police assistance because any dispute or violence was no longer a family matter but a court matter.

Very few women, however, are able to apply for civil orders of this type. Firstly, most women do not know that such orders are available. Even if they do, most women, particularly in rural areas, do not have easy access to District Courts. When Amnesty International visited Mt

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<sup>117</sup> Radhika Coomaraswamy, Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/2003/75, 6 January 2003, paras. 29-30.

See also UN General Assembly Resolution 52/86 which states that:

*"7(g) Courts, subject to the national constitution of their State, have the authority to issue protection and restraining orders in cases of violence against women, including removal of the perpetrator from the domicile, prohibiting further contact with the victim and other affected parties, inside and outside the domicile, and to impose penalties for breaches of these orders."*

<sup>118</sup> Papua New Guinea Law Reform Commission, (see note 7), pp. 54-58 and appendix 10

Hagen, for example, the District Court had not been operating normally for more than six months. To obtain an order, women also have to pay to file an application and to have the court summons served on the intended subject of the order. Finally, a degree of expertise is involved in completing the forms and providing the supporting evidence required to secure an order. As a result further expense can be involved in retaining a lawyer, unless a public solicitor, government welfare officer, a member of the court registry staff or a volunteer of a local women's organisation is available, able and willing to assist. In most places this assistance is not readily available. The Public Solicitor told Amnesty International, for example, that his Office has just 31 lawyers for the entire country and the majority are necessarily dedicated to criminal defence work.

## **5.7 Services for Victims**

The Declaration on the Elimination of Violence against Women states in Article 4(d) that:

*"women who are subject to violence should be provided with access to just and effective remedies for the harm suffered;"*

The right to a remedy for victims of violence against women includes the right to access services to assist in recovery and rehabilitation.

Accordingly Article 4(g) of the Declaration on the Elimination of Violence against Women calls on states to:

*"Work to ensure, to the maximum extent feasible in the light of their available resources and where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children, have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structure, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation."*

Government services generally in Papua New Guinea are in a state of dire neglect, particularly in rural areas. As a result women who are victims of violence are unlikely to receive either adequate healthcare or counselling or to have access to emergency accommodation or any other support services.

### ***Healthcare Services***

The nurse to population ratio in Papua New Guinea is 55:100,000. The doctor to population ratio is 5:100,000 with the majority of doctors located in Port Moresby.<sup>119</sup> These ratios, combined with Papua New Guinea's poor infrastructure and difficult, often inaccessible terrain, mean that few women who suffer violence have access to trained health care professionals.

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<sup>119</sup> World Health Organisation Regional Office for the Western Pacific, "Country Health Information Profiles 2005", p. 251, available at: <http://www.wpro.who.int/countries/>.

Even in the relatively urban areas that Amnesty International visited, most women said that as health care was expensive they would generally only access treatment in serious cases.

As one woman in Mandi village, East Sepik explained:

*"For us it is lose, and then lose again. First we suffer violence and then we have no health care to help us."*

Women who attend clinics and hospitals, regardless of how they incur their injuries, have to pay medical fees. At Port Moresby, Mt Hagen and Wewak hospitals, even rape victims referred by police for treatment and tests are required to pay fees, although sometimes individual staff exercise their discretion to waive them. According to a pamphlet produced by the FSVAC on the Family Support Centre, Port Moresby General Hospital patients are not required to pay for reports to police, but do have to pay admission/ treatment fees.

Healthcare professionals that Amnesty International spoke to at hospitals and clinics explained that they generally have no time or resources to do much more than treat women's physical injuries and send them home. At the hospitals Amnesty International visited there was no evidence of any special treatment or referral protocols in place for female victims of gender-based violence, except at the Family Support Centre at Port Moresby General Hospital.

At Mt Hagen Hospital, there was one social worker on staff but his training was as a pastor and he had little counselling or social work experience and no experience on gender issues. Only a small part of his case load related to violence against women and his knowledge of available services in the community was very limited. There were no systems for ensuring that women who attended the hospital, either through the Accident and Emergency department or as outpatients, were assessed and, if necessary referred to him. He explained that most women came to the hospital, got medical attention and then went home. He also explained that women often did not give much information to staff and that staff did not have time to ask many questions.

Amnesty International observed that, even when medical staff in the Accident and Emergency department should have had sufficient information to make a referral, they did not. As Amnesty International observed when a young rape victim attended, she was charged a fee for treatment and tests, gruffly ordered into a cubicle which offered little privacy, swabs and blood were taken, she was given emergency contraceptive pills and then she was sent home without any arrangement being made for a follow up visit. She was not given a proper physical examination and was not given any information about the purpose of the tests or when results would be available. Likewise, she was not given any information about HIV/AIDS and prevention of transmission nor was she given any information about counselling.

At Wewak hospital, there was an informal arrangement whereby one nurse on staff had been designated as the family and sexual violence referral point. When women were referred to her, she spent time with them assessing their circumstances and the risks they faced, as well as providing them with information and advice about their options and available support services. She was well connected with local organisations and at least one of the policewomen working with the local Sexual Offences Squad, knew to call her if a woman or girl had been referred by the Squad to the hospital.

However, as she explained, she was just one person and the arrangement was largely informal. While some staff knew what she did and referred patients, she lamented that many were not so reliable. When she was not on duty, she said that people were simply treated and sent home, although individual staff might take the initiative to do more.

The coordination and standard of care available for victims of violence against women was better at the Port Moresby General Hospital than at the other hospitals because of the existence of the Family Support Centre. The Centre, an FSVAC initiative, opened in 2004 and offers: trauma counselling to victims of sexual assault, child abuse counselling, crisis management counselling to victims of family violence, para-legal support, overnight emergency accommodation and referral to other agencies for further counselling, legal support and refuge. Referrals to the Centre can be received from the Accident and Emergency department, other wards of the hospitals, from NGOs, the police and other government agencies. The existence of the Centre has made it easier for women to navigate all the different services that they may need to access as a victim of violence. It has also enabled women who attend the hospital to receive more holistic treatment, including follow up personal counselling and, if requested, marriage counselling.

More work needs to be done, however, to ensure that staff within the hospital and other agencies fully utilise the Centre. Although the Family Support Centre had been open for over a year when Amnesty International visited, staff from a health clinic on the outskirts of Port Moresby reported little awareness of its work and had no protocols for referring patients or obtaining treatment advice from the Centre. The staff reported that they only had the capacity to deal with illness and injury and did not have any linkages with other agencies. In their words they "patch patients up and send them away" and "don't have time to look at domestic violence or sexual assault cases separately". They reported that there were no referral protocols for staff at the clinic to follow, although individual staff might refer patients of their own initiative.

### ***Counselling services***

Like healthcare services, government counselling and social services are limited. Welfare officers are employed by provincial Divisions of Community Development<sup>120</sup> and are located in provincial capitals and some districts throughout the country. The type of assistance they provide varies between officers and appears to depend in part on the skills, knowledge and level of commitment of the particular individual officer. Amongst other things, welfare officers provide assistance and advice to women on matters relating to family welfare, such as spousal and child maintenance orders, child custody, adoption, and other issues relating to the dissolution of marriage. Welfare officers may also provide counselling to female victims of gender-based violence, assist women to obtain good behaviour bonds and call husbands to their offices for the purposes of conducting mediation or marriage counselling.

There appeared to be few protocols or guidelines to direct the work of various officers, and there was no clear underlying policy directing the advice and assistance to be given to female

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<sup>120</sup> It depends on the province and district whether there are specialist welfare officers, women's officers, youth officers and community development officers. Often the same person wears many hats and the exact nature of the role may be determined by what, if any, programs have been funded.

victims of gender-based violence.<sup>121</sup> Many officers appeared to be well intentioned but were not properly trained, and as a result did not proactively ask women about their experiences of violence nor communicate unequivocally that violence against women was both unacceptable and a crime. In many cases where counselling was offered, it primarily focussed on resolving marital problems or related disputes and failed to address the use of violence and its consequences as a separate issue, thus reinforcing the notion that violence was a normal product of marital disputes.

A welfare officer in Mt Hagen explained that women rarely sought assistance with gender-based violence directly and instead sought assistance when their estranged husbands failed to provide financial support, or took custody of their children without consent. Available records for the office covering 6 months between April 2004 and April 2005 showed that during those six months the office dealt with 147 cases and only 3 of them were designated as domestic violence. It was not clear how many of the other cases, which were categorised amongst other things as adultery, desertion, child maintenance or family problems, involved violence.

At any rate, Amnesty International observed that there were too few welfare officers to provide effective support services and that the reach of their network was limited. Many officers did not have access to transport, phones and even their basic stationary supplies were limited. They had little or no ability to follow up cases. A welfare officer in the Western Highlands for example told Amnesty International about a woman who, with the assistance of a friend, had fearfully approached the office and reported that she had been raped and burnt by her HIV/AIDS positive husband. The woman was referred to the police station, with a letter from the welfare officer explaining her situation. When Amnesty International inquired about the progress of the case and how the woman was faring, the welfare officer said that, as the woman had never returned, she was unsure.

A male welfare officer located in the districts in Central Province told Amnesty International:

*"In our province churches are the only ones doing anything for women, if you are not associated with a church, you are neglected.....only women in nearby villages have access to me, the others just have to live with their problems."*

The Minister for Community Development, Lady Carol Kidu, has made similar observations. When commenting on the use of custom to justify the effective sale of young women, she said:

*"Sadly, the capacity of the government's welfare system cannot reach out to our villages and remote areas and young girls do not have anywhere to go for help"*<sup>122</sup>

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<sup>121</sup> A nurse in the Western Highlands advised Amnesty International that she had given up referring women in her district to the resident welfare officer because he simply started relationships with them himself.

<sup>122</sup> "Dame Carol Condemns Practice", The National Online, 23 May 2005.  
(<http://www.thenational.com.pg/0523/nation5.htm>)

## 5.8 Public Education and Awareness Raising

In addition to providing protection and redress to female victims of gender-based violence, international law and standards require states to adopt broader measures to inform the community about the extent and seriousness of violence against women; to educate the community about the rights that women have under domestic and international law and about how those rights can be exercised and to challenge and modify cultural attitudes and practices which discriminate against women and impede their enjoyment of their rights.

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women, paragraph 24 (t)(ii), calls for:

*"Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women".*

The Declaration on the Elimination of Violence against Women, Article 4 (j), calls on states to:

*"Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women".*

The Convention on the Elimination of All Forms of Discrimination against Women, Article 5, sets out the following binding obligation:

*"States Parties shall take all appropriate measures:*

*(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."*

In the context of the Law Reform Commission's work, referred to above, the government, in cooperation with an NGO, the Women and Law Committee, undertook a massive public-education campaign to try to change attitudes to wife-beating. Leaflets and posters bearing the message "wife-beating is a crime" and explaining relevant aspects of the criminal law and family law were distributed in the late 1980s and early 1990s in large numbers around the country, including to rural areas. Amongst other places, the materials went to schools, hospitals, police stations, Village Courts and other government offices. A video which explained what was wrong with wife-beating and how beaten wives could get help from the law was produced and distributed widely and played on national television. It was also used in training programmes for police, court staff, probation officers and some health workers. National radio participated by broadcasting plays, panel discussions, documentaries, interviews and recordings of training sessions.

However, since the LRC concluded its work on domestic violence in 1992, there has been little in the way of further concerted awareness raising and public education conducted by the



State on violence against women. Instead this type of activity has been almost entirely left to NGOs. As noted above, provincial and district officials with nominal responsibility for the implementation of CEDAW at grass-roots level reported that they had little or no budget for awareness raising or educational activities. Events are held and speeches made on key dates, such as National Women's Day but most of the events are only attended by women, only held in urban centres and are not part of a larger, sustained coordinated campaign.

The current Minister for Community Development, Lady Carol Kidu, has been consistently vocal in condemning acts of gender-based violence and other forms of discrimination against women. She is frequently quoted in the media raising concerns about the denial of women's human rights. While her government colleagues occasionally express outrage when a particularly heinous act of violence against women is reported in the media, issues relating to women's rights are rarely otherwise raised by government leaders.

Donor-funded, government sponsored workshops, conferences and professional training of police, Village Court staff, welfare officers and others continue to occur on some level. Amnesty International observed, however, that such initiatives were largely ad hoc, not delivered systematically and uniformly to targeted regions or sub-sections of the community, took little account of existing levels of knowledge or previous programmes, were not supported by the ongoing provision of information, advice or other services, and were generally not followed up by any assessment of their impact and success. Many women complained to Amnesty International that the same people received the same basic training in different contexts (human rights awareness, HIV/AIDS awareness, dispute resolution training etc) without the wider community, particularly in rural areas, ever hearing the relevant messages once. When Amnesty International asked a woman working in the settlements in Port Moresby about what more could be done to challenge and change attitudes towards women, her answer reflected that of many others: "less workshops in hotels, more education in the community."

Alarm about Papua New Guinea's HIV/AIDS epidemic and the awareness raising which has been conducted in response has largely eclipsed all other public education and awareness raising initiatives in recent years. In its early stages the HIV/AIDS campaign was largely focussed on raising people's awareness about the existence of the disease and encouraging changes to sexual behaviour. However, the need to address contributing factors such as violence against women has increasingly been acknowledged. It is possible therefore that through the lens of HIV/AIDS awareness and prevention campaigns, violence against women will again receive national attention.

## **6. Women Human Rights Defenders Responding to Violence in Papua New Guinea**

### **6.1 Who are Women Human Rights Defenders?**

"Human rights defender" is a term used to describe people who, individually or with others, peacefully act to promote or protect human rights. Ultimately, human rights defenders (HRDs) are defined by what they do rather than how they label themselves. Many people who could aptly be described as HRDs, have never heard of the term and may not even appreciate that

the work they do to assist their community is, in fact, in furtherance of international human right standards.

Across the world, human rights defenders have fought, often against the odds, to establish fairer, more equitable societies. They have campaigned to compel governments to deal with gross inequalities in the distribution of wealth, access to basic health facilities, education, water and food. They have struggled against government suppression of civil and political rights. They have fought to protect the environment and defend economic, social and cultural rights. They have documented and highlighted human rights violations and sought justice for victims. They have provided legal advice and representation, counselling and rehabilitation support to victims of human rights abuses. They have contributed to the material implementation of international human rights treaties by helping to establish housing, health care and sustainable income-generation projects for poor and marginalized communities. They have delivered human rights education to vulnerable populations and disseminated information on human rights in schools, universities, and through the media to the general public. They have provided training to groups such as judges, lawyers, police officers, soldiers and human rights monitors on the application of human rights standards in the context of their professional activity.<sup>123</sup>

In order to be labelled a HRD, a person must accept the universality of human rights as set out in the Universal Declaration of Human Rights. This means a person can not claim to be a HRD because they campaign for certain rights, if they refuse to recognise certain other rights.

On 9 December 1998, the eve of the 50th anniversary of the Universal Declaration of Human Rights, the UN General Assembly adopted the UN Declaration on Human Rights Defenders, thereby acknowledging the need to protect HRDs and their work. Article 1 of the Declaration states:

*"Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."*<sup>124</sup>

A Special Representative of the UN Secretary General on the situation of human rights defenders was appointed in August 2000.

Women have played an instrumental role in the global human rights movement. Women HRDs work on the full spectrum of human rights and are not confined to working on issues of special concern to women nor to the human rights specifically covered in CEDAW. However, one area where women HRDs have made a particular impact worldwide is in their efforts to ensure that gender-based violence against women is recognised as a human rights abuse

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<sup>123</sup> For a more extensive explanation about human rights defenders and the work they undertake – see the website of the Office of the High Commissioner for Human Rights, "Special Representative of the UN Secretary General on Human Rights Defenders – About Human Rights Defenders" from where this summary is taken at: <http://www.ohchr.org/english/issues/defenders/who.htm>

<sup>124</sup> UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. General Assembly resolution 53/144, 8 March 1999, Annex. The Declaration is commonly known as the UN Declaration on Human Rights Defenders, a name which will be used here.

which states must prevent and punish, and that victims of such violence, irrespective of where it occurs and the identity of the perpetrator, have access to justice and redress.

## **6.2 Women Human Rights Defenders in Papua New Guinea**

Like their global colleagues, women HRDs in Papua New Guinea have long been at the forefront of efforts to prevent gender-based violence against women and to improve the services available to victims of gender-based violence.

When Amnesty International visited Papua New Guinea in October 2005, the organisation met with nineteen local non-governmental organisations (NGOs)<sup>125</sup> and over forty women human rights defenders who were, in one manner or another, responding to violence against women. With limited resources, and often isolated from one another, these women HRDs were primarily concerned with providing direct and immediate assistance to women in need around them. A list of the NGOs Amnesty International met with is included in Appendix 1. It is ***by no means an exhaustive list*** of NGOs in Papua New Guinea working to prevent violence against women, assist victims of such violence and raise community awareness about women's human rights. Rather, the list reflects the provinces visited by Amnesty International, (the National Capital District, the Western Highlands and East Sepik), and the networks of the Individual and Community Rights Advocacy Forum (ICRAF) who were of great assistance to Amnesty International in arranging meetings in the field.

Women HRDs with whom Amnesty international met were leading key initiatives such as: campaigns to increase public awareness about the prevalence and negative consequences of gender-based violence in Papua New Guinea; efforts to provide human rights training to government employees and church and community leaders; projects dedicated to supporting and providing protection to victims of intimate partner violence, sexual violence, and other forms of gender discrimination; protests against widespread impunity for violence against women; efforts to secure more equitable representation of women in all areas of public life; and projects to provide women with the skills and opportunities to achieve economic independence and advancement. Profiles of some of the women that Amnesty International met and a brief outline of their work and achievements is set out in "Papua New Guinea: Women Human Rights Defenders in Action (ASA 34/003/2006)".

Amnesty International notes that, although the focus of this current report is on women HRDs, human rights work relating to gender-based violence and other forms of discrimination is not the exclusive domain of women in Papua New Guinea. Many of the NGOs Amnesty International met with also included men amongst their staff and volunteers.

## **6.3 What Obligations does the State have to Work with Women Human Rights Defenders?**

The integral and legitimate role that human rights defenders play in promoting and protecting human rights, reflected in international standards, is matched by government obligations. The UN Declaration on Human Rights Defenders, sets out the rights of human rights defenders. It identifies specific freedoms and activities which are essential to their work, including the right

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<sup>125</sup> "Non-governmental organisation" is intended here to also include community based organisations and church organisations.

to know, seek, obtain and receive information about human rights and fundamental freedoms, the right to participate in peaceful activities against violations of human rights and the right to criticize and complain about the non-compliance of governments with human rights standards and to make proposals for improvement.

The Declaration requires that states give effect to these rights and freedoms to ensure human rights defenders may carry out their work freely, without interference or fear of threats, retaliation or discrimination.

With respect to violence against women in particular, international law and standards acknowledge the expertise of women's rights organisations and call on governments to work with them. This represents recognition of the fact that women human rights defenders and the organizations they work with, particularly those providing immediate practical services such as shelter and counselling, are an important source of information, guidance and experience about the needs of women survivors.

Specifically, Article 4 of the UN Declaration on the Elimination of Violence against Women, (paras. o and p), calls on states to:

*"Recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women; Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels."*

According to UN Article 14 of General Assembly Resolution 52/86:

*" Member States and the private sector, relevant professional associations, foundations, non-governmental and community organizations, including organizations seeking women's equality, and research institutes are urged, as appropriate:*

*(...)*

*(f) To support initiatives of organizations seeking women's equality and non-governmental organizations to raise public awareness of the issue of violence against women and to contribute to its elimination."*

## **6.4 Partnership not Substitution**

Amnesty International observed that, rather than working in partnership with the government, women HRDs in Papua New Guinea and the organisations they worked with, were frequently called upon to attempt to fill the void left by the inadequate provision of government services.

As noted above, the UN Declaration on the Elimination of Violence against Women calls on states to recognise the legitimate role played by women's organisations and to cooperate with and facilitate their work. However, it is State parties which ratify CEDAW and State parties which bear primary responsibility for ensuring its implementation. While the Government of Papua New Guinea can and should aim to meet its treaty obligations by working in partnership with NGOs, it cannot ask or expect those organisations to implement the treaty in its place. This issue was touched upon by the Committee on the Rights of the Child in its

Concluding Observations on Papua New Guinea's initial report under the UN Convention on the Rights of The Child. The Committee made the following comments:

*"Cooperation with NGOs*

*22. The Committee notes with appreciation the cooperation with NGOs in the area of service delivery and their involvement in the preparation of various programmes relevant for the Convention. However, the Committee expresses its concern that this involvement may result in a diminished direct commitment of the State party.*

*23. The Committee wants to underscore that the State party has the primary responsibility for the implementation of the Convention and recommends the State party to remain fully and directly involved in this implementation while encouraging and supporting NGOs in their important function as partners.*<sup>126</sup>

***It is the State which has Obligations under CEDAW***

A number of problems arise with respect to NGOs being required to step into the shoes of the State rather than working in partnership with the State to deliver services in Papua New Guinea. Firstly, although NGOs might be answerable to donors, they are not mandated or obliged to provide the services they offer such as counselling, para- legal advice or human rights education. They are free to withdraw or reduce the services they offer as circumstances dictate. Many women HRDs have other demands on their time, they move location, they move job, they lose their funding or they may simply experience burn-out. Likewise NGOs encounter funding and staffing issues which mean they go through periods of decline or change their direction and focus.

For example, ICRAF, with only one lawyer on staff has very limited capacity to take on the legal cases of women seeking family law orders, good behaviour bonds or other forms of legal redress. Therefore, as happened in 2005, when the case load becomes too high the organisation may decide that it will take on no new cases for a period of months. Lucy Goro, an experienced crisis counsellor with para-legal skills who runs a crisis centre for women in Maprik, East Sepik, is often required to travel away from Maprik for extended periods for work, training and networking reasons. Despite assistance from her family, her absence often means the Centre is closed. The very active Catholic Family Life Services in Mt Hagen provides counselling and counselling training but they are too busy to actively reach out to women outside the Catholic Church and they are not obliged to do so. In Port Moresby, when Amnesty International met both Lifeline and YWCA, organisations which in the past have provided counselling and other support to female victims of gender-based violence, both were in the process of revitalising their organisations after periods of relative inaction.

Amnesty International strongly appreciates the value and importance of the work that these individuals and organisations undertake. Despite their good work, it was apparent in Papua New Guinea that NGOs received little support from the State and little recognition of the fact that, in providing services, they were in fact assisting the State to meet its international treaty obligations. When the services they offered were disrupted or discontinued, those services

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<sup>126</sup>Concluding Observations of the Committee on the Rights of the Child: Papua New Guinea, Committee on the Rights of the Child 35<sup>th</sup> Session, UN Doc. CRC/C/Add.229, 30 January 2004, paras. 22-3.

were not replaced. Further, there was no recognition of the government's duty both to provide services to compliment those already provided and to offer support and funding to NGOs to ensure that they were in a position to maintain the standard and reach of their important work.

The Family and Sexual Violence Action Committee (FSVAC) potentially provides a good model for how the State can work in partnership with non-State actors and agencies to meet its treaty obligations. However, even in the context of the FSVAC, participating State agencies do not always appear to appreciate that their obligations to address violence against women arise not from their membership of the FSVAC but from their responsibilities under national and international law.

The FSVAC is one of the 12 sectoral committees of the Consultative Implementation and Monitoring Council (CIMC). Established in 1998 by a decision of the National Executive Council, the CIMC facilitates communication between government, the private sector, NGOs, churches and academic and research institutions. The CIMC is chaired by the Minister for Planning and Implementation but is an independent body located outside the public service. Funding for the CIMC comes both from government and international donors. Its purpose is to develop policy and directly influence and monitor government decision making. The CIMC has limited implementation powers and no direct responsibilities itself, its primary function is to facilitate dialogue, planning and coordination between those who do have the capacity to put policy into action.

In 2001 after wide consultation, the FSVAC as a sectoral committee of the CIMC devised an integrated long-term strategy to address family and sexual violence. The strategy addressed the reforms and measures required to meet every aspect of the State's due diligence obligations with respect to violence against women. However, because of the nature of the FSVAC as an umbrella body for community, church, private sector and government agencies, the plan was not couched in terms of State responsibilities and obligations. On the contrary, recognizing that multiple stakeholders have a role to play in responding to family and sexual violence, the plan set out a five year program of action which anticipated coordinated activities involving both government and non-government actors and agencies.

The FSVAC has achieved positive collaboration and focus on the issue of family and sexual violence, at least at the national level.<sup>127</sup> However, while the FSVAC integrated long term strategy should inform and guide the plans and policies of State agencies, it cannot substitute for them. The police service, national and provincial departments, welfare services and the many other State agencies which have a role to play in addressing violence against women, cannot meet their obligations simply by being available to participate in and cooperate with the FSVAC on the implementation of its plan. Unlike the NGOs which choose to participate in the FSVAC, State agencies' responsibilities do not arise from their voluntary participation in the Committee and extend beyond just completing the tasks they are allocated. For

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<sup>127</sup> The FSVAC long term integrated strategy anticipates the creation of a Provincial FSVAC (PFSVAC) in each province. In both the provinces Amnesty International visited there was no operational PFSVAC. Both provinces had been visited by the Program Director of the FSVAC who had explained the work and vision of the FSVAC and laid the groundwork for a PFSVAC. However, in the Western Highlands, Amnesty International was told "it doesn't function, it hasn't started yet." In East Sepik, Amnesty International was told that divisions between local groups needed to be resolved before it was clear who would be responsible for the PFSVAC and take it forward.



participating State agencies, FSVAC meetings should be about exploring how they can most effectively meet their obligations in collaboration with others.

### ***The Role of the State in Ensuring Justice***

A further problem with NGOs being called upon to substitute for the State is that there are some services which only the State can provide. In particular, only the RPNGC has the mandate to investigate allegations of violence against women, arrest the alleged perpetrator, and file criminal charges. Women HRDs working outside the government can raise awareness in the community that violence against women is a crime, they can educate women about their rights and their avenues for exercising those rights, they can assist women who are too afraid to approach the police service to report an offence, they can provide women with counselling, information and support throughout an investigation and prosecution, they can provide women with legal representation and they can, in theory, even provide counselling or education to a perpetrator of violence against women including as part of his sentence - but they cannot themselves bring perpetrators to justice. The failure of the State, therefore, to deliver the services which only it can provide, often ultimately undermines the work undertaken by women HRDs and NGOs. Cognisant of the inadequacies of the RPNGC and the formal justice system, when victims of violence against women seek their assistance, women HRDs are often put in the position of having to find pragmatic solutions outside of the criminal justice system.

In fact, in describing their work to Amnesty International, the vast majority of cases women HRDs discussed with the organisation involved them providing trauma counselling to women, providing women with financial assistance to escape abusive relationships by returning home to their family in the village, providing temporary refuge for women who had been subjected to violence, undertaking mediation or "marriage counselling" in which they tried to calm violent male partners down and to persuade them not to use violence in future, assisting women to obtain good behaviour bonds from the District Court to restrain their partner's violent behaviour, and assisting women to pursue other civil remedies unrelated to violence but which might, nonetheless, force their partners to pay them maintenance or compensation for having committed adultery.

Women HRDs working outside the government concentrate on providing assistance in these forms, *in part* because this type of help is requested and required and *in part* because women HRDs know they are operating in an environment where the arrest and prosecution of the perpetrator is highly unlikely.

## **6.5 Some Responses to Violence Against Women Reinforce Gender Inequality**

With limited State support available and under pressure to provide immediate assistance to women in need, Amnesty International found that some NGOs that addressed gender-based violence in their work, inadvertently reinforced rather than challenged gender inequalities. Unable to effectively approach intimate partner violence as crime, many NGOs instead concentrated on approaching intimate partner violence as a manifestation of 'trouble' in a domestic relationship and focussed their efforts on addressing this perceived 'trouble'.

A counsellor with an NGO in Port Moresby, for example, told Amnesty International how a woman who had been beaten by her husband for many years approached her organisation for assistance. She reported that the woman had many physical scars including old knife wounds. Seeing the woman's injuries, the counsellor decided to summon the woman's husband. He came to the organisation's premises and the counsellor reported that she talked to him for some time about the reasons for his behaviour. After a lengthy discussion with him, the counsellor then left the couple alone to talk over their differences. She reported that he immediately became agitated again, hit his wife and that the organisation was forced to eject him.

Amnesty International heard many stories of inappropriate and potentially dangerous "marriage counselling" of this sort, including from experienced counsellors. One woman HRD discussed with Amnesty International the approach she took when an abusive husband came to collect his wife from her house.

*"We have to be clever about how we talk to the men, we don't want to just make them angry. We have to show that we listen to them too, that we are trying to understand them too and then we can start to sort the problem out."*

A Port Moresby based NGO in its written counselling advice to a husband whose wife had left their shared church and commenced attending a different church wrote:

*"We feel sorry to hear that your wife did not honour you as the head of the family and we understand how you feel about it".*

The letter went on to advise the man to make more effort to listen to and understand his wife and emphasized that neither he nor his wife was wrong.

Another woman HRD who spoke to Amnesty International identified the six month statutory limitation on civil adultery suits as amongst the biggest human rights concerns facing women in Papua New Guinea. She said that the time limitation was unfair and arbitrary and often denied women the opportunity to sue their adulterous husbands and lovers for compensation. Although she dealt with women who had experienced gender-based violence every day, she did not mention gender-based violence as a human rights concern. Many women HRDs were surprised to hear that the State had no obligation under international human rights law to prevent or punish a husband's infidelity – whereas it does have obligations to investigate and prosecute a husband who beats his wife even if his motivation for doing so was her infidelity.

As noted, one of the reasons that women HRDs adopt these approaches is that they are aware of the inadequacies of the criminal justice system and they know that women cannot rely on the police for protection nor to investigate adequately allegations of gender-based violence. However, their approaches also reflect the fact that women HRDs themselves may never have received any training or education about women's human rights or how to adopt a rights based approach to providing services such as counselling.

## **7. Barriers to Change – Challenges Faced by Women Human Rights Defenders**

In taking on and sustaining their work in support of women's human rights, women HRDs face numerous challenges. In fact, as *women* HRDs working on *women's* human rights they often face both the same and additional challenges to their male counterparts working in other areas of human rights activism. Not surprisingly therefore, Amnesty International found that interviews with women HRDs about the frustrations and difficulties they encountered in their work provided a clear lens through which to view and understand some of the main obstacles to realising women's human rights in Papua New Guinea. These obstacles include: chronic under-representation of women in public life; excuses that gender-based violence and other forms of gender discrimination are justified on ill-defined 'cultural' grounds; excuses that the government simply does not have the resources to address gender-based violence and other forms of gender discrimination; the absence or failure of independent mechanisms tasked with monitoring government compliance with human rights standards and demanding accountability from government agencies; lack of community awareness about women's human rights and the government's obligations to respect, protect and promote those rights; and the absence of effective protection for those who face threats to their personal safety as a result of their human rights activism.

### **7.1 Women's Lack of Representation**

One of the greatest challenges faced by women HRDs in Papua New Guinea is that their voices are largely confined to the periphery of political, economic and social debate. The women of Papua New Guinea are not a multitude of passive, silent victims. There are many strong, articulate women working to promote respect for women's human rights. However, their ability to influence public policy and spending and to affect institutional reform is undermined by women's lack of representation at every level of government, in the police service, in the judiciary and amongst Village Court officials. For example, in the National Parliament there is just one elected female representative amongst the 109 parliamentarians. Women make up just 5.6 per cent of the RPNGC. Only one of the eighteen National and Supreme Court judges is female. In Provincial Assemblies, Local Level Governments and District and Village Courts women are also acutely under-represented.

Experience demonstrates in Papua New Guinea that the best opportunities to affect change in relation to gender-based discrimination often arise when women human rights defenders are able to partner with women inside government. For example, legislative amendments criminalising rape in marriage were introduced to the National Parliament by the only elected female representative. Likewise at the grassroots level, a women's safety house program in Morata settlement was possible because a woman police Sergeant worked with the women of the settlement to establish and support the initiative. Unfortunately, women's under-representation within government agencies and public decision making fora, means that these opportunities for partnership are extremely limited.

There are no legal provisions which restrict women's participation in politics or other areas of public life. Rather, women's under-representation is a product of social and cultural factors. It

is, in part, a legacy of the fact that in most Papua New Guinean societies women have traditionally played a subordinate role to men, particularly with respect to public and community decision-making.<sup>128</sup> The limited representation of women in decision making positions in Papua New Guinea means that issues which particularly affect women, such as the causes and consequences of gender-based violence and other forms of gender discrimination, are less likely to be discussed or afforded priority by decision makers. In this way, women's under-representation in public decision making posts both reflects the gender discrimination women routinely experience in Papua New Guinea and impedes attempts to address it.

That is not to suggest that violence against women is an issue which is only relevant to women. When women suffer gender-based violence it impacts on the well-being of their whole family. The prevalence of gender-based violence in the community has negative economic and development implications for the entire country. Furthermore, just as it affects the entire community, addressing gender-based violence against women also requires the engagement of the community as a whole. In particular, it necessarily involves working with men to change their attitudes and behaviours towards women.

However, while gender-based violence should be an issue of concern to everyone, the reality in Papua New Guinea is that it is not. Within male-dominated government agencies which have the authority to initiate, resource and implement gender related reforms, there is little sense of urgency about the need to address gender-based violence. The 2001 United Nations Papua New Guinea Common Country Assessment found, for example, that:

*"[p]erhaps the greatest challenge to Government is to overcome the widespread feeling that gender equality is not a pressing concern."*<sup>129</sup>

When they engage with the police service, Village Courts, District Courts, Provincial Assemblies, Local Level Governments and National Parliament, women HRDs attempt to lobby predominately male institutions which often have little interest in disrupting a social paradigm which affords men control over women. The issue of gender-based violence is very seldom on their agenda, and before women HRDs can even begin to put their position, they first have to convince those in authority that the issues they seek to raise are legitimate, important and worthy of attention.

Article 7 of CEDAW provides that:

*"States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:*  
*(a) To vote in all elections and public referenda and to be eligible for election to all publicly*

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<sup>128</sup> "Overview of Status of Papua New Guinea Women", Platform for Action: A Decade of Action for Women Towards National Unity and Stability 1995- 2005, Government of Papua New Guinea, June 1995.

<sup>129</sup> "United Nations Common Country Assessment Papua New Guinea", The United Nations Country Team, Port Moresby, 2001, p. 45.

*elected bodies;*

*(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;*

*(c) To participate in non-governmental organizations and associations concerned with the public and political life of country."*

General Recommendation No. 23 of the CEDAW Committee examines in more detail states' obligations in this area.<sup>130</sup> States are responsible for identifying, implementing and monitoring measures to:

- *achieve a balance between women and men holding publicly elected positions;*
- *ensure that women understand their right to vote, the importance of this right and how to exercise it;*
- *ensure that barriers to equality are overcome, including those resulting from illiteracy, language, poverty and impediments to women's freedom of movement;*
- *assist women experiencing such disadvantages to exercise their right to vote and to be elected;*
- *ensure equality of representation of women in the formulation of government policy;*
- *ensure women's enjoyment in practice of the equal right to hold public office;*
- *ensure that recruiting processes directed at women are open and subject to appeal;*
- *ensure that effective legislation is enacted prohibiting discrimination against women; encourage non-governmental organizations and public and political associations to adopt strategies that encourage women's representation and participation in their work.*<sup>131</sup>

Some steps have been taken in Papua New Guinea to increase women's representation in public life. For example, in the political arena, the Organic Law on Provincial and Local Level Government 1995 requires that two women be appointed to each rural Local Level Government<sup>132</sup>, one woman be appointed to each urban Local Level Government<sup>133</sup> and one woman be appointed to each Provincial Assembly.<sup>134</sup> At the national level, the Organic Law on the Integrity of Political Parties and Candidates 2003 encourages political parties to endorse female candidates by allowing for a reimbursement to be paid to political parties from a central fund if they endorse a female candidate in a national election and the candidate receives at least ten per cent of the votes in her electorate. Outside of the political arena, the RPNGC established an Equal Employment Opportunity Policy and Equal Opportunity Unit in 2001. And, as noted above, an amendment to the Village Court Act in 2001 required that each Village Court should have at least one female magistrate by 2005.

<sup>130</sup> CEDAW Committee, General Recommendation No. 23, Article 7 (political and public life) (16th session, 1997).

<sup>131</sup> *Ibid*, paras. 45-47.

<sup>132</sup> Section 29(1)(c)(iii).

<sup>133</sup> Section 29(1)(d).

<sup>134</sup> Section 10(e).

It is perhaps too early to assess what impact these initiatives, and others like them, will have on women's participation in public life.<sup>135</sup> However, early signs suggest that without concerted support for, and monitoring of, their implementation, these initiatives will fail to achieve their intended effect. For example, it has been reported that many Local Level Governments have failed to appoint women's representatives as required by law.<sup>136</sup> At the Provincial Assembly level in the Western Highlands and East Sepik, Amnesty International was repeatedly told by women's organisations that the appointment of a single woman to the Assembly was akin to "window dressing". In East Sepik, the appointed women's representative herself reported with frustration that without a position on the Provincial Executive Council, she was able to exert little influence, particularly with respect to budgetary allocation. Despite the provisions encouraging political parties to endorse female candidates, only one woman was elected to the National Parliament in the 2002 election. The amendments to the Village Courts Act have not been given effect to, seemingly without response from the government or parliament. The impact of the RPNGC Equal Opportunity Employment Policy on the number of policewomen has yet to be seen, as at the time of writing no recruitment of either women or men had taken place for at least four years. However, where voluntary community police officers have been recruited, such as in East Sepik, Amnesty International was told there were no strategic plans to ensure women were properly represented amongst the volunteers, with the result that they were not.

## **7.2 Excuses One: Culture**

Women HRDs reported to Amnesty International that another barrier they consistently faced in their work was that 'culture' was often invoked as an excuse or explanation for the denial of women's human rights in Papua New Guinea.

Most of the women HRDs that Amnesty International spoke to were very proud of their cultural heritage and keen to share information about the history and traditions of their place of origin. However, many women HRDs also expressed frustration at the manner in which certain cultural practices, most notably bride price and polygamy, were allowed to persist in their current form even though they had consistently been identified as contributing to gender-based violence and the confinement of women to limited or stereotyped roles.

The difficulty that women HRDs face in confronting the use of 'culture' as a barrier to women's human rights, is that traditional customary norms and practices are often afforded a

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<sup>135</sup> These legislative and policy reforms have also been accompanied by additional measures, such as conferences and workshops, designed to strengthen the capacity and confidence of women to participate in decision making fora and to successfully nominate for and assume public positions of authority. For a summary of some of the measures taken in the field of politics and policing, see for example: Loveridge, D and Kotvojs, F, "Gender Mainstreaming in the Royal Papua New Guinea Constabulary" Development Bulletin 64, Australian National University, October 2002, p. 40; Sepoe, Orovu, "To Make a Difference: Real Realities of Women's Participation in Papua New Guinea politics", Development Bulletin 59, Australian National University, October 2002, p. 40, Korare, D, Gender and Perceptions of Political Power in Papua New Guinea", Development Bulletin 59, Australian National University, October 2002, p. 47; McLeod, A, Cultural Impediments to Gender Reforms in the Royal Papua New Guinea Constabulary", The Journal for Women and Policing, The Australasian Council for Women and Policing, Issue No. 16, 2005, p. 41.

<sup>136</sup> Sepoe, Orovu, "To Make a Difference: Real Realities of Women's Participation in Papua New Guinea politics", Development Bulletin 59, Australian National University, October 2002, p. 40.



mythical, elevated status in public and political discourse in Papua New Guinea. Conversely, foreign systems of law and governance, and the manner and speed with which they were introduced to Papua New Guinea are frequently, at times perhaps justifiably, identified as causes of Papua New Guinea's current law and order problems. Reflecting this paradigm, Amnesty International observed that women HRDs often frame their advocacy so as to demonstrate that the objectives they seek, that is, respect for women and protection from violence, are consistent with and involve a return to 'traditional' customary norms and practices, and that therefore acts which degrade or harm women, are in violation of those norms and practices. The need to accede to this framework for debate demonstrates both the power it holds over popular consciousness and the potential cost of venturing beyond it.

As an illustration, with respect to bride price, women HRDs told Amnesty International that, rather than allowing a man to purchase a woman and then treat her as he desired, bride price was actually intended to protect women. Amnesty International was variously told by women HRDs that bride price historically provided women with insurance in the event that their husbands deserted them or failed to provide for them, that bride price historically ensured that families looked after and protected their potentially valuable daughters, and that bride price historically ensured that women's value as labourers and farmers was properly recognised. Likewise, Amnesty International was told that historically, rather than leading to domestic violence and neglect, polygamy was sanctioned to ensure that all the women of a village were protected and provided for. With respect to community decision making, women HRDs in different regions told Amnesty International about how women's leaders historically had authority or were consulted in many spheres of important public decision making.

Amnesty International does not offer anthropological expertise on how 'cultural practices' or 'traditions' historically manifested themselves in Papua New Guinea, nor on why or how they might have changed over time. Customary norms and practices vary greatly between communities in Papua New Guinea and continue to evolve and change. It is important that if there is this type of public discourse women, as well as men, are afforded the opportunity to participate in describing and defining their shared heritage and mapping the future of their culture. Women HRDs need opportunities to demonstrate, where possible, that international human rights standards are the manifestation of a set of principles which are already inherent in the customary norms and practices of the peoples of Papua New Guinea, rather than being merely foreign and imposed.

However, women HRDs should not be restricted or restrict themselves to engaging in human rights advocacy within these parameters. That is, they should not be restricted to advocating for human rights only to the extent that they can make a case for those rights being entirely consistent with 'authentic' cultural practices. CEDAW and other relevant international standards<sup>137</sup> clearly state that existing norms and practices offer no excuse for the State avoiding its obligations with respect to the elimination of gender-based violence and other forms of gender discrimination. Specifically, Article 2 (f) of CEDAW provides that states must undertake:

*"to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."*

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<sup>137</sup> see for example: The UN Declaration on the Elimination of Violence Against Women, Article 4.

Therefore, given that Papua New Guinea is a state party to CEDAW, *even where women's enjoyment of their rights as recognised under the treaty is not ostensibly consistent with customary norms and practices*, women HRDs are entitled to demand that those customs and norms will not be used as an excuse for failing to implement the treaty. Furthermore, women HRDs are entitled to demand that the State take proactive measures to modify or abolish those customs and norms which are inconsistent with the full implementation of Papua New Guinea's international human rights obligations, including those under CEDAW.

It is in this final respect that the State has to date failed women HRDs and women generally in Papua New Guinea. While the Constitution provides that a custom shall not be applied or enforced to the extent that it is inconsistent with the Constitution or a statute or is repugnant to the general principles of humanity,<sup>138</sup> very few steps have been taken to identify those customs which fall foul of this provision and/or are inconsistent with the State's CEDAW obligations. Accordingly, few steps have been taken to devise strategies, legislative or otherwise, to modify those customs. On the contrary, family law matters such as marriage, divorce, custody of children, the division of property upon divorce or death and provision of maintenance for separated spouses are primarily regulated by customary laws, which have never been subject to review.

The work of women HRDs is strengthened when they can refer to legislation and policies which support their human rights messages. It is no coincidence that one of the primary slogans for the Law Reform Commission's awareness campaign over a decade ago was "wife beating is a crime". Implicit in the slogan was the message that irrespective of any custom, wife beating was no longer sanctioned and was in fact prohibited and punishable. It is important for women HRDs to have unequivocal laws, the authority of which they can rely upon and use as a tool in their awareness raising activities. Additionally, such clarity would offer safety and certainty to female victims of violence and certainty of investigation for men who perpetrate such violence.

### **7.3 Excuses Two: Lack of Resources**

Another recurrent theme in Amnesty International's discussions with women HRDs was that whoever they lobbied to take a particular action – the police service, Local Level Government, National Government – the answer was always the same: we don't have any money to do anything.

Some women HRDs said they thought this was just an excuse for inaction. Some women HRDs believed the reason there was no money was because it had always been spent on other things, legitimate or otherwise, and no priority had been given to women's concerns. Some women HRDs accepted that the State had very limited resources, so they attempted to seek donor funding themselves to perform the tasks that the State could not or would not. In most cases the result was usually the same – advocacy directed at the State and designed to bring about measures to promote and respect women's human rights was thwarted or paralysed because the excuse that there were no available resources proved insurmountable.

Appropriate funding for the infrastructure of the criminal justice system, services and support to survivors of gender-based violence, is an important measure of governments' commitment

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<sup>138</sup> Schedule 2.1.

to making rights a reality. It is a sign of their good faith in implementing their obligations under international human rights law. Without adequate funding, plans to address violence against women will not materialise and will not prove effective.

The UN Declaration on the Elimination of Violence against Women, Article 4 (h), calls on states to:

*"Include in government budgets adequate resources for their activities related to the elimination of violence against women."*

The Beijing Platform for Action, paragraph 124 (p), calls on states to:

*"allocate adequate resources within the government budget and mobilise community resources for activities related to the elimination of violence against women, including resources for the implementation of plans of action at all levels."*

State poverty as a reason for the state failing to meet its human rights obligations has been considered by treaty bodies in the past, in the context of international human rights treaties other than CEDAW. For example, in its General Comment on Article 2 of the International Covenant on Civil and Political Rights, the Human Rights Committee states:

*"A failure to comply with this obligation cannot be justified by reference to social, cultural or economic considerations within a state."*

The Committee on the Rights of the Child, when considering the same issue, the availability of resources to address rights, said:

*"States need to be able to demonstrate that they have implemented 'to the maximum extent of available resources'...."<sup>139</sup>*

Commitment and political will can be shown concretely through providing a reasonable proportion of available resources, even if the resources available are limited.

For this reason, women HRDs in Papua New Guinea need channels and mechanisms through which they can ask questions and demand answers about government spending. Women HRDs need both the capacity and the opportunity to ask of government agencies, including the police service: what resources were requested for activities designed to eliminate gender-based violence against women? What resources were in fact allocated? How are those resources intended to be used? To the extent that the resources requested or required to continue to address gender-based violence have not been allocated – which adjustments to activities will be made and why? The authorities, for their part, should respond promptly and with reliable and detailed information. Without the ability to engage in a dialogue of this sort at every level of government, it is very difficult for women HRDs to penetrate beyond the assertion of government agencies that they are doing all they can to address gender-based violence with the resources they have, and to commence instead to lobby for a more equitable share of State resources, however limited those resources might be.

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<sup>139</sup> Committee on the Rights of the Child, General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), UN Doc. CRC/GC/2003/5, 27 November 2003, para. 7.

#### **7.4 Lack of Human Rights Awareness and Other Constraints on Advocacy**

The approach that women HRDs take to their work is influenced by the absence of a strong human rights culture in Papua New Guinea. There are many women and NGOs effectively undertaking human rights work, in that they provide assistance to women who have suffered gender-based violence and reach out to the community to raise awareness about human rights related issues. However, very few NGOs in Papua New Guinea describe themselves as 'human rights organisations', explicitly operating within a framework based on international human rights standards or have human rights monitoring and advocacy as part of their core mandate. How individuals and organisations describe themselves is less important than what they actually do but this lack of direct identification with an explicit human rights agenda is nonetheless significant. It reflects the fact that public understanding and awareness about human rights in Papua New Guinea remain low. It also reflects the fact that there is little recognition of human rights work except to the extent that it manifests in the direct delivery of services. Organisations in Papua New Guinea generally exist to conduct training, awareness-raising, and economic empowerment programs and to provide counselling, refuge or legal advice and representation. Human rights monitoring, documentation and advocacy are afforded very little priority or attention as legitimate activities in their own right. There is often insufficient understanding, including amongst women HRDs, of how international human rights law translates into State obligations and duties to properly evaluate the State's international human rights compliance.

Many women HRDs and the NGOs they work with are reluctant to engage in direct advocacy targeted at the State. As service providers, their emphasis is on creating and maintaining networks and cooperative relationships with State agencies and there is a reluctance to jeopardise relationships by using direct or public advocacy. "Increased cooperation" and "increased awareness raising" were common objectives voiced by women HRDs in interviews with Amnesty International. "Increased State accountability", however, was not a central theme in the same way. This is evident in the type of human rights work undertaken. For example, while Amnesty International spoke with several women HRDs who had been involved with providing gender sensitive or human rights training to police, Amnesty International did not meet any women HRDs who were engaged in systematic human rights monitoring of police conduct or policies.

Education and awareness raising on women's human rights is both valuable and essential. Men and women and State agencies must understand what women's human rights are in order that they can be fully realised. However, in the absence of any sustained and systematic human rights monitoring or targeted pressure for accountability, compliance with human rights standards remains largely voluntary, patchy and wholly inadequate.

#### ***Security Risks***

Personal security concerns also circumscribe the approach taken by women HRDs to their work. When asked about the personal security implications of their work, all the women HRDs spoken to by Amnesty International expressed a sense that their work had earned them respect, and therefore a degree of safety, in the community. However, many also recalled incidents where they had been threatened, mostly by the husbands of women they

were seeking to assist. In Port Moresby, a woman HRD working at a women's refuge nonchalantly described how husbands sometimes came to the refuge angry and armed but she explained that she usually managed to talk them down and then explain things to them. One woman HRD from the Western Highlands explained *"it's dangerous to intervene in someone else's family."* Another woman HRD also from the Highlands reported that it was risky to confront a conspiracy of silence within a community, particularly when a woman had been killed for allegedly practicing sorcery. She explained that women HRDs were: *"at risk of being attacked for 'unburying' what was 'buried'.* Aware of the risks they face, women HRDs explained that their best defence was to seek consensus rather than confrontation and to ensure that communities they worked in valued what they were doing.

Women HRDs had no expectations that the State might be able to afford them any form of protection including by investigating threats or acts of intimidation directed towards them.

The circumstances of the Prosecution Service in Mt Hagen provides an illustration of the State's inability to provide protection even to its own officers. When Amnesty International visited Mt Hagen, one of the resident public prosecutors had recently been forced to leave town. He had been involved in the successful prosecution of two policemen who, during the course of a raid, had beaten a young boy and thrown him into a burning house, where he died. After continual threats on his life the prosecutor had been temporarily transferred out of town. His colleague with whom Amnesty International spoke said *"It's not going to solve the problem. It will be here when he gets back. We are all under threat in the office. We get threats every day. We don't have secure accommodation."*

## **7.5 Absence of Accountability Mechanisms**

The work of women HRDs in Papua New Guinea is also made more difficult by the absence of effective oversight and accountability mechanisms through which the State's compliance with its obligations under national and international law can be monitored and enforced. Women HRDs can highlight the State's failure to meet its due diligence obligations to prevent, investigate, punish and ensure reparation for acts of violence against women, but they have few avenues through which they can compel the State to act or attach consequences to its failure to act.

There is no independent domestic mechanism which is mandated to monitor and evaluate Papua New Guinea's progress in implementing CEDAW, nor is there a mechanism which is empowered to receive and address individual complaints in relation to breaches of the State's obligations under that treaty. The UN Committee on the Rights of the Child observed the same in respect of the Convention on the Rights of the Child, and made the following recommendation to the Government of Papua New Guinea:

*"The Committee encourages the State party to pursue its efforts with a view to developing and establishing an independent and effective mechanism, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex) and the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the protection and promotion of the rights of the child, that monitors the implementation of*

*the Convention, deals with complaints from children in a child-sensitive and expeditious manner, makes it easily accessible to children and provides remedies for violations of their rights under the Convention. The Committee also recommends that the State party provide such a mechanism with adequate human and financial resources. In this regard, the Committee recommends that the State party consider seeking technical assistance, inter alia, from UNICEF and the Office of the United Nations High Commissioner for Human Rights (OHCHR).*<sup>140</sup>

It is not clear whether the proposed Office of Women's Development (OWD) is intended to fill this function with respect to CEDAW or, as appears more likely, its role will be limited to the provision of policy advice.<sup>141</sup>

Likewise, it is not clear what form the proposed National Human Rights Commission (NHRC) will take. The establishment of a NHRC has been discussed in Papua New Guinea for over a decade. There was a lot of enthusiasm and activity around the idea in the mid-1990s. However, for reasons which remain unclear the proposal for a NHRC as it then stood was shelved by the Ministry of Justice and Attorney General and momentum was lost. In 2005, the push for a NHRC was revived primarily through the efforts of the Minister for Community Development, Lady Carol Kidu. At a national conference on CEDAW in November 2005, the Minister for Justice and Attorney General announced that the government was in the process of establishing a Human Rights Commission in Papua New Guinea.<sup>142</sup>

It remains to be decided what capacity, powers and resources the NHRC will have to undertake human rights education, to provide policy and legislative advice, to conduct investigations on individual complaints, and to take action in the event that human rights are found to have been violated. In the event that the NHRC does have an investigative or even punitive and compensatory capacity, it is not clear whether the scope of its activities will be limited to the rights and freedoms articulated in the National Constitution or encompass international human rights laws and standards more generally. At any rate the NHRC is unlikely to be operational in the near future.

In the meantime, the Ombudsman's Commission has very broad powers which include the jurisdiction to investigate abuses of basic rights as set out in the Constitution.<sup>143</sup> However, owing to capacity constraints, the Commission has traditionally focussed its efforts on operating as a good governance and anti-corruption watchdog and has undertaken very few investigations into human rights violations. In mid 2005, an anti-Discrimination and Human Rights Unit was established within the Ombudsman's Commission, funded by the U.N. Development Program (UNDP). When Amnesty International visited the Unit, it consisted of

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<sup>140</sup> Concluding Observations of the Committee on the Rights of the Child: Papua New Guinea, Committee on the Rights of the Child 35<sup>th</sup> Session UN Doc. CRC/C/Add.229, 30 January 2004, para. 15.

<sup>141</sup> When the Prime Minister announced that the National Executive Council had approved its establishment in May 2005, he said in a press release: "*The ODW will assist the government directly by providing clearer, accurate, well researched policy advice.*"

<sup>142</sup> "Human Rights Body on the Way", The National Online, 28 November 2005.

(<http://www.thenational.com.pg/1128/nation23.htm>)

<sup>143</sup> For an explanation of the functions and powers of the Ombudsman's Commission see the Government of Papua New Guinea's Law and Justice Sector website at: <http://www.lawandjustice.gov.pg/www/html/107-role-of-the-agency.asp>



two UN Volunteers whose work was focussed on conducting a feasibility study to determine what form the Unit itself should take in order to meet community needs and be effective and sustainable within the Commission. In the course of this process, the Unit had conducted some human rights education and awareness raising activities. The Unit did not have the capacity to take on and investigate individual complaints, although it had intervened to assist prisoners in a few isolated cases.

For those with access to the courts and legal assistance, the rights and freedoms set out in Part III Division 3 of the National Constitution are protected by and enforceable in the National and Supreme Courts.<sup>144</sup> These rights include the right to liberty, life, freedom of movement, freedom from inhuman treatment and a guarantee of equality irrespective of race, tribe, place of origin, political opinion, colour, creed, religion or sex. To protect or enforce a right, the Court may take action either on its own initiative or on application by any person who has an interest in the protection and enforcement of a listed right.<sup>145</sup> In exercising its jurisdiction the Court may make all such orders and declarations as necessary or appropriate for the purposes of protecting and enforcing a listed right.<sup>146</sup> Where a person's rights or freedoms as set out in Part III Division 3 are infringed, he or she is also entitled to reasonable damages and, if the court thinks it proper, exemplary damages in respect of the infringement.<sup>147</sup>

The problem with these procedures for the protection and enforcement of rights is that they are costly, time consuming and dependent on access to legal advice and representation. The Public Solicitor has extremely limited capacity to assist with applications of this kind, few NGOs have the necessary skills and expertise and the Ombudsman's Commission does not take this type of action on behalf of others.<sup>148</sup> Even in Port Moresby, where people are most likely to have access to the courts, the NGO ICRAF reported to Amnesty International that they refer people to the Ombudsman's Commission and the Public Solicitor; while the Public Solicitor and the Ombudsman's Commission reported that they refer people to ICRAF. With respect to claims for damages, there are additional barriers to a successful action including a six month statutory limitation on the notification of a claim and onerous requirements as to how the claim must be served on the State and the particulars of the claim that must be provided.<sup>149</sup>

### ***Internal Affairs Directorate of the RPNGC***

With respect to the RPNGC, the Internal Affairs Directorate is responsible for public complaints against the police services. Police officers can face administrative charges for breaches of discipline, with penalties including a caution, fine, suspension, demotion in rank,

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<sup>144</sup> Section 57(1), National Constitution of Papua New Guinea

<sup>145</sup> Section 57(1) and (2), National Constitution of Papua New Guinea.

<sup>146</sup> Section 57(3), National Constitution of Papua New Guinea

<sup>147</sup> Section 58, National Constitution of Papua New Guinea

<sup>148</sup> According to information on the Government of Papua New Guinea Law and Justice Sector website at <http://www.lawandjustice.gov.pg/www/html/107-role-of-the-agency.asp>

<sup>149</sup> The procedural barriers to claims by victims of human rights violations are set out in more detail in a 2005 Human Rights Watch report, (see note 15 ) pp. 97- 100.

and dismissal from the force. Where police have committed a criminal offence, such as assault, murder or rape, they are also liable to charge just like ordinary members of the public. The Internal Affairs Directorate is responsible for recording complaints against police, monitoring criminal investigations involving police as suspects, adjudicating disciplinary offences, and maintaining records of completed files.

There is little public faith in the effectiveness of the Internal Affairs Directorate which has failed to hold police accountable even for gross and direct violations of human rights. There are isolated cases where policemen have been charged and convicted of raping women in police custody<sup>150</sup> but they remain the exception to a general pattern of impunity.

In March 2004 police raided the Three Mile Guest House in Port Moresby where a number of women in the sex industry and their clients were present. The women and girls were rounded up, assaulted with sticks, bottles and iron bars and pelted with food and beer. More than twenty of the women and girls present were forced to chew and swallow condoms, others were forced to drink urine and at least one woman was raped, including with a drink can and bottle. Those arrested were forced to march through the streets to the police station enduring further humiliation and taunts along the way. Later that night, at least four girls were taken from their cells and gang raped. The case received national and international media attention and prompted a protest march by civil society groups through Port Moresby. While eventually the prostitution related charges against the women were dropped no criminal charges have been pressed to date against the police officers involved.<sup>150</sup>

The 2004 government commissioned review of the RPNGC found:

*"The Police Internal Affairs Directorate investigates complaints against the Police. Stakeholders (including many Police) clearly indicated to the Committee that they had no confidence in this system, or of the ability of the Police to conduct a proper impartial disciplinary process. The perception within the community is that the Constabulary has done little, if anything, to discourage misconduct or criminal actions by Police, or improve its overall professional image...."*

*The lack of discipline results in :*

- *reluctance to report Police misconduct. The public consider that the complaint will not receive proper attention, and know that undisciplined Police are likely to take revenge on the complainant. **A recently conducted perception survey found that the main reasons the public would not report incidence of police misconduct***

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<sup>150</sup> For example, in May 2004 a policeman in Madang was sentenced to 10 years imprisonment for raping a female detainee. See: "Policeman gets 10 years for rape", The National Online, 25 May 2004.

***were a fear of retaliation from police, and a belief that no action would be taken.***<sup>151</sup> [emphasis added]

A 2005 Human Rights Watch report on human rights violations by police against children confirmed that public perception of police accountability mechanisms was justified. For example, in an interview with Human Rights Watch, a police officer responsible for investigations and prosecutions of police in Alatoa described a case from 2003 in which a woman complained that police officers were asking her for sex.<sup>152</sup>

*"It wasn't very serious like rape," he explained. He told Human Rights Watch that he "found insufficient evidence to pursue it criminally. . . . I couldn't go anywhere because the policemen here were not cooperative. I got stuck." Instead, he "recommended that she get a lawyer."*

All the women HRDs who spoke to Amnesty International expressed great frustration at the difficulty of holding police to account for their own human rights violations, let alone for their failures to act or failures to act diligently and promptly on abuse by others. As one woman told Amnesty International:

*"Don't you understand? The police can get away with beating, raping and even shooting people. Do you think they are going to get into trouble for just ignoring a woman?"*

## 8. Recommendations

*This section presents a selection of the report recommendations. For the complete set of recommendations, please refer to the end of document.*

There is a plethora of existing recommendations on measures that the Government of Papua New Guinea should introduce to both prevent violence against women and girls and improve its response to victims. These include:

- the Law Reform Commission's 1992 recommendations;
- the 2001 Integrated Long Term Strategy of the Family and Sexual Violence Action Committee;
- selected recommendations from the 1997 AusAID Papua New Guinea Law and Justice Baseline Survey of Community Initiatives; and
- selected recommendations from the 2004 Combined Government of Papua New Guinea and AUSAID Gender Analysis of the Papua New Guinea Law and Justice Sector Program.

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<sup>151</sup>Report of the RPNGC Administrative Review, (see note 11), p. 39.

<sup>152</sup> Human Rights Watch Report (see note 15) pp. 85- 86.

This list is by no means exhaustive. However, an audit of even this small sample reveals that the same recommendations have been made repeatedly, and, for the most part, have repeatedly failed to be taken up.

Amnesty International endorses much of the content of these previous bodies of work and calls upon the Government of Papua New Guinea, including leaders at all levels of government, to afford the issue of violence against women the priority and attention it deserves and to provide the political will and resources necessary to transform rhetoric and recommendations about gender equality into reality.

Specifically, **Amnesty International calls on the Government of Papua New Guinea** to do the following:

***With respect to CEDAW and other International Human Rights Treaties, the Government of Papua New Guinea should:***

- Fulfil its reporting requirements under CEDAW and as a matter of priority submit, publish and widely distribute its long overdue initial report to the CEDAW Committee and two subsequent periodic reports, now also overdue.

***With respect to the collection of data on violence against women and girls, the Government of Papua New Guinea should:***

- Develop and provide the necessary resources to implement a standard system for collecting data and compiling statistics on violence against women and girls for use by all service agencies. Such a system should ensure that data is not just collected but also routinely collated, widely published and used to inform targeted government planning. Such a system should also be used to measure the impact of any measures adopted by the government to address violence against women and girls.

***With respect to plans to address violence against women and girls, the Government of Papua New Guinea should:***

- Ensure that the National Government and each Provincial and Local Level Government has a Plan for Preventing Violence Against Women and Girls. A common framework should be established for these plans that ensures coherence across provinces and ensures the plans address all aspects of the State's due diligence obligations, the practical measures to be adopted at each stage of implementation, the timescale for implementation and the resources which will be provided. The contents of the plan should be subject to broad and effective consultation with relevant NGOs and implementing agencies and appropriate forms of participation by non-government organisations in implementing the plans should be encouraged, acknowledged and facilitated. Plans should be widely publicised to the general public. All public servants should be familiar with the plans which affect the regions in which they work and should

be issued with instructions about their particular responsibilities, including in relation to referring women and girls to relevant services. National, Provincial and Local Level Governments should prepare periodic reports evaluating the implementation of their plans, indicating any existing obstacles to implementation.

Violence against women and girls affects the majority of women and girls in Papua New Guinea. It is a major impediment to gender equality. It has a negative impact on the economy and on community development and it is a contributing factor to the spread of the HIV/AIDS epidemic and a major barrier to its containment. **Throughout Papua New Guinea, responsibility for addressing violence against women and girls should be assumed at the most senior political level. Introducing a time-bound, resourced and cohesive method of addressing violence against women is essential and urgent.**

***With respect to gender discrimination and law reform, the Government of Papua New Guinea should:***

- Modify or abolish existing laws and regulations which discriminate against women and girls in family or public life and which are inconsistent with CEDAW. A review of current legislation, particularly family law legislation, and its compliance with CEDAW has already been undertaken by the Department of Justice and Attorney General. The outcome of this review should be widely publicised and distributed by that Department and a subsequent legislative reform package introduced to the National Parliament.

***With respect to Women and girls and the Village Courts, the Government of Papua New Guinea should:***

- Ensure that on going human rights training is provided to all Village Court officials, with particular emphasis on women's human rights as provided for under CEDAW and the National Constitution.

***With respect to Women's Representation in Public Life, the Government of Papua New Guinea should:***

- Develop programmes with time-bound targets to encourage women and girls to become involved in State and civil society institutions, to support women's full role in society and governance and to take part on an equal basis with men in leading positions, including in the judiciary and other positions in the legal system.

***With respect to the provision of services to victims, the Government of Papua New Guinea should:***

- Ensure that clear referral protocols which link police, health care and welfare services (such as counselling, emergency accommodation and para-legal advice) are in place, that relevant staff and their superiors are familiar with the protocols and that they are followed systematically.

***With respect to public awareness raising about violence against women and girls, the Government of Papua New Guinea:***

- Maximise the effectiveness of public awareness-raising designed to prevent violence against women and girls by ensuring that target audiences are clearly identified, that the goal of any awareness raising campaign is clearly defined, that the medium of communication is chosen accordingly and that the campaign takes account of existing levels of knowledge.

***With Respect to Oversight and Accountability Mechanisms, the Government of Papua New Guinea Should:***

- Ensure that there is a designated, properly resourced body responsible for overseeing and monitoring the implementation of CEDAW **and mandated to receive, investigate and take action on complaints from individuals or groups about breaches of the treaty, including failures to prevent, investigate and punish violence against women and girls.** This function might be filled by the fledgling Human Rights and Discrimination Unit at the Ombudsman's Commission, by a future National Human Rights Commission or by a future Office for Women's Development. Whichever agency assumes this role, it must be independent, adequately staffed by trained personnel, have the capacity and resources to travel across the country, have the capacity and resources to inform the public, particularly women and girls, about its role, and to publicise the outcome of its investigations.<sup>153</sup>

***With respect to the Criminal Justice System, the Royal Papua New Guinea Constabulary, with support from the Government of Papua New Guinea, should:***

- Take immediate action against members of the RPNGC who are alleged to have committed human rights violations against women and girls. Individuals suspected of committing human rights violations should be suspended from positions of responsibility pending the outcome of independent and transparent investigations. All individuals against whom there is evidence of involvement in committing human rights violations should face criminal prosecution and be brought to trial in a manner which is consistent with international standards for fair trials. Commanding officers who know or should know of human rights violations against women and girls committed by their

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<sup>153</sup> Amnesty International's general recommendations for the effective protection and promotion of human rights by National Human Rights Institutions are contained in AI Index: IOR 40/007/2001 at <http://web.amnesty.org/library/index/ENGIOR400072001>



subordinates, and who fail to take action to prevent and punish them, should face similar sanctions.

***With respect to sentencing options for crimes of violence against women and girls, the Government of Papua New Guinea should:***

- Monitor and ensure that punishments imposed for crimes of violence against women and girls consistently reflect the serious nature of such crimes. Under no circumstances should crimes of violence against women and girls incur the death penalty, which is in itself a grave human rights violation.

***Amnesty International calls on community leaders and religious leaders to:***

- Work to create an environment which supports women and girls and addresses violence, by: raising awareness about violence against women and girls; building community structures and processes to protect women from violence without compromising their rights and freedoms; providing assistance to survivors of violence; and ensuring that women human rights defenders are free to carry out their work.

***Amnesty International calls on the international community, including international donors, to:***

- Express serious concern, directly in meetings with senior representatives of the government of Papua New Guinea and through public statements, about the prevalence of violence against women and girls in Papua New Guinea and the failure of the State to respond effectively to the human rights violations leading to, inherent in and following from such violence.

## **Appendix One**

**In September and October 2005, Amnesty International met with representatives of the following non-government organisations in Papua New Guinea:**

FRIENDS foundation  
PEACE foundation Melanesia  
Family and Sexual Violence Action Committee  
HOPE Worldwide PNG  
Individual and Community Rights Advocacy Forum  
Lifeline PNG  
Prison Fellowship  
Anglicare StopAIDS PNG  
Young Women's Christian Association of PNG  
Port Moresby City Mission (Haus Ruth)  
Meri Kirap Sapotim  
Morata Four Community Association  
Save the Children PNG  
Stella Maris Women's Ministry (Wewak)  
Mt Hagen Country Women' Association  
Mt Hagen Catholic Family Life Services  
Western Highlands Provincial Council of Women  
Minj District Council of Women  
HELP Resources  
East Sepik Provincial Council of Women  
Angoram District Council of Women  
East Sepik Christian Women's Association

**Amnesty International also met with representatives of the following government agencies:**

Department of Community Development

- Minister for Community Development
- Representatives of the Women's Division
- Representatives of the Community Development Division of Central Province Provincial Government
- Representatives of the Community Development Division of Western Highlands Provincial Government

Department of Justice and Attorney-General

- Village Court Secretariat
- International Law Division
- Community Justice Liaison Unit

Office of the Public Prosecutor  
Office of the Public Solicitor

Mt Hagen District Court Registry

Royal Papua New Guinea Constabulary

- Deputy Police Commissioner (Administration)
- Members of the Sexual Offences Squad (Port Moresby, Mt Hagen and Wewak)
- General Duties Police (Port Moresby, Mt Hagen and Wewak)
- Community Policing (Waigani and Wewak)
- Training Unit (Mt Hagen)
- Welfare Unit (Port Moresby)

Correctional Institutional Services

Ombudsman Commission

- Discrimination and Human Rights Unit
- Highlands Regional Office

National Research Institute

National Aids Council Secretariat

Staff at the Port Moresby General Hospital, Mt Hagen Hospital and Wewak Hospital

**Amnesty International also met with representatives of the following international agencies:**

UNICEF

United Nations Development Programme

AusAID



# **Papua New Guinea Violence Against Women: Not Inevitable, Never Acceptable!**

**(ASA 34/002/2006)**

## **The Full Report Recommendations**

*This document lists the full recommendations from the report Papua New Guinea - Violence Against Women: Not Inevitable, Never Acceptable! (ASA 34/002/2006).*

There is a plethora of existing recommendations on measures that the Government of Papua New Guinea should introduce to both prevent violence against women and girls and improve its response to victims. These include:

- the Law Reform Commission's 1992 recommendations;
- the 2001 Integrated Long Term Strategy of the Family and Sexual Violence Action Committee;
- selected recommendations from the 1997 AusAID Papua New Guinea Law and Justice Baseline Survey of Community Initiatives; and
- selected recommendations from the 2004 Combined Government of Papua New Guinea and AUSAID Gender Analysis of the Papua New Guinea Law and Justice Sector Program.

This list is by no means exhaustive. However, an audit of even this small sample reveals that the same recommendations have been made repeatedly, and, for the most part, have repeatedly failed to be taken up.

Amnesty International endorses much of the content of these previous bodies of work and calls upon the Government of Papua New Guinea, including leaders at all levels of government, to afford the issue of violence against women the priority and attention it deserves and to provide the political will and resources necessary to transform rhetoric and recommendations about gender equality into reality.

Specifically, **Amnesty International calls on the Government of Papua New Guinea** to do the following:

***With respect to CEDAW and other International Human Rights Treaties, the Government of Papua New Guinea should:***

- Fulfil its reporting requirements under CEDAW and as a matter of priority submit, publish and widely distribute its long overdue initial report to the CEDAW Committee and two subsequent periodic reports, now also overdue.
- Ratify the Optional Protocol to CEDAW, enabling individual women and girls and groups to petition the CEDAW Committee directly about violations of their rights under the treaty.
- Compliment its ratification of other international human rights treaties by becoming a State party to the International Covenant on Civil and Political Rights; the International Covenant of Economic, Social and Cultural Rights and the Convention Against Torture.
- Invite the UN Special Rapporteur on Violence Against Women, its Causes and Consequences to visit Papua New Guinea and to report on the adequacy of measures adopted by the State to both prevent, investigate and punish violence against women

and girls and to provide redress to victims.

***With respect to the collection of data on violence against women and girls, the Government of Papua New Guinea should:***

- Develop and provide the necessary resources to implement a standard system for collecting data and compiling statistics on violence against women and girls for use by all service agencies. Such a system should ensure that data is not just collected but also routinely collated, widely published and used to inform targeted government planning. Such a system should also be used to measure the impact of any measures adopted by the government to address violence against women and girls.
- Without compromising confidentiality, ensure data relating to a specific woman, particularly historical records which reveal patterns of violence, is available to assist in the criminal prosecution of acts of gender-based violence or to assist a woman to obtain civil remedies.
- Provide training to those responsible for gathering data to impress upon them the importance of individual confidentiality, the importance of data collection for successful prosecutions of crimes of gender-based violence, the importance of data collection for planning purposes and the necessity to proactively seek information on gender-based violence from women and girls.
- Provide support for the National Research Institute to conduct a national baseline survey of family and sexual violence, including by facilitating access to government records and staff and by instructing all government agencies to lend their full cooperation to those conducting the survey.

***With respect to plans to address violence against women and girls, the Government of Papua New Guinea should:***

- Ensure that the National Government and each Provincial and Local Level Government has a Plan for Preventing Violence Against Women and Girls. A common framework should be established for these plans that ensures coherence across provinces and ensures the plans address all aspects of the State's due diligence obligations, the practical measures to be adopted at each stage of implementation, the timescale for implementation and the resources which will be provided. The contents of the plan should be subject to broad and effective consultation with relevant NGOs and implementing agencies and appropriate forms of participation by non-government organisations in implementing the plans should be encouraged, acknowledged and facilitated. Plans should be widely publicised to the general public. All public servants should be familiar with the plans which affect the regions in which they work and should be issued with instructions about their particular responsibilities, including in relation to referring women and girls to relevant services. National, Provincial and Local Level Governments should prepare periodic reports evaluating the implementation of their plans, indicating any existing obstacles to implementation.

Violence against women and girls affects the majority of women and girls in Papua New Guinea. It is a major impediment to gender equality. It has a negative impact on the economy and on community development and it is a contributing factor to the spread of the HIV/AIDS epidemic and a major barrier to its containment. **Throughout Papua New Guinea, responsibility for addressing violence against women and girls should be assumed at the most senior political level. Introducing a time-bound, resourced and cohesive method of addressing violence against women is essential and urgent.**



***With respect to gender discrimination and law reform, the Government of Papua New Guinea should:***

- Modify or abolish existing laws and regulations which discriminate against women and girls in family or public life and which are inconsistent with CEDAW. A review of current legislation, particularly family law legislation, and its compliance with CEDAW has already been undertaken by the Department of Justice and Attorney General. The outcome of this review should be widely publicised and distributed by that Department and a subsequent legislative reform package introduced to the National Parliament.
- Enact legislation which gives effect to the recommendations of Law Reform Commission in its 1992 Final Report on Domestic Violence, including by amending the Evidence Act to allow for the compellability of spouses to give evidence in certain circumstances and by amending the District Court Act to allow for a simplified system of Protection Orders to replace the current Good Behaviour Bond regime.
- Conduct a review of customary laws and practices particularly as they relate to marriage, the payment or return of bride price, adultery, the dissolution of marriage, the custody of children and the division of property upon divorce or death, and adopt measures to modify or abolish, including but not only through legislation, any customary laws and practices which are identified as inconsistent with CEDAW and other human rights treaties to which Papua New Guinea is a party.
- Conduct a review of existing measures available to prevent or, where necessary, prosecute and punish, members of the community who conspire to pervert the course of justice by pressuring female victims of gender-based violence to "settle" serious criminal charges by way of compensation payment alone. If existing measures are found to be inadequate for this purpose, the introduction of specific legislation should be investigated.

***With respect to Women and girls and the Village Courts, the Government of Papua New Guinea should:***

- Ensure that on going human rights training is provided to all Village Court officials, with particular emphasis on women's human rights as provided for under CEDAW and the National Constitution.
- Provide clear directives to Village Court Magistrates about the implications of the primacy of the National Constitution and CEDAW over customary law. Specifically, all Village Court Magistrates, should be given clear instructions, including through training, that:
  - violence against women and girls cannot be justified by custom and that any custom based claim of a "right" to inflict violence on a woman will not be recognised by the Village Courts;
  - violence against women and girls includes assault, arbitrary deprivation of liberty, rape, marital rape, forced marriage, child marriage, sexual abuse of female children in the household and the threat of any of those acts;
  - an offence of violence against a woman, including rape, is an offence against her and not her family and therefore any compensation awarded should be awarded to her as an individual;
  - no woman can be ordered to return to her husband against her will;
  - no woman who leaves her husband after suffering violence should be ordered to repay her bride price; and
  - Under any circumstances where a wife leaves her husband her

contribution to household duties, child rearing and household income over the course of a marriage should be deducted from the amount of the bride price to be repaid.

- Before commencing a mediation process or issuing an order, Village Court Magistrates should be required to directly advise the parties that, although they will apply customary law, they are bound by the Constitution and therefore they will not enforce any custom that discriminates against women and girls or sanctions violence against women and girls. Further, Village Court Magistrates should be required to advise the parties that any Village Court order that does not comply with the Constitution can be overturned by a higher court on appeal.
- Provide clear directives and training to Village Court officials on how they can and should utilise their powers to make preventative orders to stop violence against women and girls before it occurs and to provide protection to women and girls. Such training should ensure that preventative orders are not themselves used to restrict women's rights and freedoms in the name of ensuring their "safety".
- Provide clear directives and training to Village Court officials on the Court's jurisdictional limits. Where Village Courts are called upon to mediate compensation claims or make orders for compensation in relation to criminal offences which are beyond their jurisdiction and for which no one has yet been tried before a formal court of law, the Village Court Magistrates should be instructed to refuse to exercise their jurisdiction until the parties provide a formal undertaking to continue to cooperate with any criminal investigation and prosecution, notwithstanding any agreement reached as to compensation.
- Provide resources to the Village Court Secretariat and Provincial Supervisors as a matter of priority to ensure that oversight and accountability mechanisms are restored. In particular, the records of all Village Courts should be regularly collected and reviewed, with particular attention given to whether any Village Court decisions discriminate against women and girls in process or in substance. Where decisions are found to be in excess of jurisdiction or discriminatory they should be immediately quashed and the parties and Village Court Magistrates notified.
- Provide information and advice to Village Court users, particularly women and girls, about their right to appeal to the District Court, possible grounds of appeal and people available in their local area to assist them in making an appeal. This might include, a specified staff member from the Public Solicitor's Office, where there is one in the province; a specified member of staff at the Court Registry or a local women's organisation with para-legal experience. In the event the last option is relied upon, State resources should be made available to ensure that such organisations have the on-going capacity to provide such a service.
- Conduct a public information campaign, focussed in particular on rural areas, to raise community awareness about the proper role and powers of the Village Courts. Where Village Court records reveal examples of decisions and orders directed at preventing violence against women and girls or which acknowledge a woman's right to live free from gender-based violence – ensure those examples receive coverage in the media and are brought to the attention of other Village Courts. Where Village Court decisions are overturned on review or appeal – also ensure that these examples are brought to the attention of other Village Courts and receive wide coverage.
- Ensure that fair and transparent mechanisms are in place to discipline and, if necessary dismiss, any Village Court Magistrate who, Village Court records or public complaints reveal, has failed to implement training received on women's human rights or whose

decisions are consistently overturned on the basis that they discriminate against women and girls.

***With respect to Women's Representation in Public Life, the Government of Papua New Guinea should:***

- Develop programmes with time-bound targets to encourage women and girls to become involved in State and civil society institutions, to support women's full role in society and governance and to take part on an equal basis with men in leading positions, including in the judiciary and other positions in the legal system.
- Steps should be taken to ensure that all Provincial Assemblies and Local Level Governments have complied with their obligations under domestic administrative law to appoint one or two female representatives. The criteria for selecting representatives should be transparent.
- In advance of the 2007 national and local level government elections, a national strategy should be adopted aimed at encouraging the nomination of women, encouraging political parties to endorse female candidates and providing assistance to female candidates and female voters on whatever basis is necessary to ensure that they are able freely, equally and safely to contest the election and vote in it.
- Take concrete steps to increase the proportion of women in the RPNGC from the current 5.4 per cent. Any future recruitment should be preceded by an awareness-raising campaign encouraging women to apply and explaining why the police services require women. Practices and aspects of the culture within the RPNGC, which make it an inhospitable environment for female staff, should also be reviewed and reformed.
- Put in place a strategy with a clear timetable and goals for increasing the number of female magistrates above the mandatory one woman. In the very short term, enforce the requirement under domestic administrative law that every Village Court must have at least one female Magistrate by 2005. Incentives, such as preferential access to training opportunities, should be provided to Village Courts which comply with the requirement to increase the number of female magistrates.
- Put in place systems of accountability which require that if any government agency, including the RPNGC and other agencies in the Law and Justice Sector, undertakes recruitment and fails to increase the percentage of women amongst its staff, the head of that agency must explain why they have been unable to give increased effect to the Constitutional goal of gender equality and how they intend to ensure compliance in the future.

***With respect to the provision of services to victims, the Government of Papua New Guinea should:***

- Ensure that clear referral protocols which link police, health care and welfare services (such as counselling, emergency accommodation and para-legal advice) are in place, that relevant staff and their superiors are familiar with the protocols and that they are followed systematically.
- Ensure that healthcare professionals, welfare officers, counsellors and legal advisors are given training in how to respond to female victims of gender-based violence in a manner which respects women's human rights and prioritises the safety and welfare of the victim. In particular, it should be impressed upon staff who deal with female victims of gender-based violence that they personally play an important role in determining how women

and girls perceive the violence they have suffered and how they understand their options and rights with respect to obtaining justice and redress.

- While recognising that the State is the primary duty bearer under international human rights law, work with non-governmental organisations, including church organisations and international donors, to ensure that women and girls who are subject to gender-based violence have access to health care services, counselling, emergency accommodation and legal advice and to ensure that such services are provided in a way which respects and promotes women's rights.

***With respect to public awareness raising about violence against women and girls, the Government of Papua New Guinea:***

- Maximise the effectiveness of public awareness-raising designed to prevent violence against women and girls by ensuring that target audiences are clearly identified, that the goal of any awareness raising campaign is clearly defined, that the medium of communication is chosen accordingly and that the campaign takes account of existing levels of knowledge.
- Maximise the effectiveness of public awareness campaigns by ensuring that they occur in coordination with relevant service providers, both government and non-government, so that people who are targeted by the campaign are able to immediately act on the information received and access any services promoted.
- Utilise the networks of non-governmental organisations, including church organisations, to ensure that awareness raising campaigns about women's human rights penetrate beyond urban centres.

***With Respect to Oversight and Accountability Mechanisms, the Government of Papua New Guinea Should:***

- Ensure that there is a designated, properly resourced body responsible for overseeing and monitoring the implementation of CEDAW **and mandated to receive, investigate and take action on complaints from individuals or groups about breaches of the treaty, including failures to prevent, investigate and punish violence against women and girls.** This function might be filled by the fledgling Human Rights and Discrimination Unit at the Ombudsman's Commission, by a future National Human Rights Commission or by a future Office for Women's Development. Whichever agency assumes this role, it must be independent, adequately staffed by trained personnel, have the capacity and resources to travel across the country, have the capacity and resources to inform the public, particularly women and girls, about its role, and to publicise the outcome of its investigations.<sup>154</sup>
- Ensure that sufficient resources are provided to the Office of the Public Solicitor for the dedicated purpose of providing legal advice and representation to women and girls seeking to prevent or end a violation of their rights under the National Constitution or seeking compensation where their rights have been violated. In particular, such assistance should be provided where a State agency such as the RPNGC or the Village Courts is responsible for the actual or threatened rights violation.
- Ensure that the Internal Affairs Directory of the RPNGC is adequately resourced and has the skills, capacity and authority to monitor rigorously and enforce police compliance with the Disciplinary Code, and to investigate and act upon complaints against members of the

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<sup>154</sup> Amnesty International's general recommendations for the effective protection and promotion of human rights by National Human Rights Institutions are contained in AI Index: IOR 40/007/2001 at <http://web.amnesty.org/library/index/ENGIOR400072001>

RPNGC, whether those allegations concern the commission of a criminal act or a failure to perform a duty. It must be clear that the authority of the Internal Affairs Directory extends to all policemen and women, including auxiliary community police.

- In order to restore the confidence of the women and girls of Papua New Guinea in the RPNGC, establish a dedicated team within the Internal Affairs Directory with responsibility for dealing with complaints both about police violence against women and girls and police responses to violence against women and girls. A public awareness raising campaign should be conducted to inform women and girls and organisations which work with female victims of gender-based violence about the existence and functions of the unit. Periodic reports about the unit's activities, including the outcome of any disciplinary or criminal proceedings against police, should be made publicly available.
- Implement as soon as practicable the recommendations with respect to the restoration of discipline contained in the 2004 Report of the Royal Papua New Guinea Constabulary Administrative Review Committee to the Minister for Internal Security Hon. Bire Kimisopa. Those recommendations include:
  - the establishment of an independent Office of Police Ombudsman to exercise an oversight function with respect to the investigation of complaints made by the public about police action.
  - a requirement that police clearly display their name tags or numbers of their uniform and carry an identification card to be produced on demand.

***With respect to the Criminal Justice System, the Royal Papua New Guinea Constabulary, with support from the Government of Papua New Guinea, should:***

- Take immediate action against members of the RPNGC who are alleged to have committed human rights violations against women and girls. Individuals suspected of committing human rights violations should be suspended from positions of responsibility pending the outcome of independent and transparent investigations. All individuals against whom there is evidence of involvement in committing human rights violations should face criminal prosecution and be brought to trial in a manner which is consistent with international standards for fair trials. Commanding officers who know or should know of human rights violations against women and girls committed by their subordinates, and who fail to take action to prevent and punish them, should face similar sanctions.
- Issue a directive to all members of the RPNGC from the Police Commissioner that violence against women and girls is regarded as a serious matter by the police services, and that failure to respond to or investigate allegations of such violence wherever it occurs and whoever is the alleged perpetrator will be considered a serious disciplinary offence and dealt with accordingly.
- Ensure that police are provided with a budget which allows the RPNGC to address continuing shortcomings in police logistics, equipment and housing and which empowers the police services to respond to complaints of violence against women and girls, including in rural areas.
- Ensure that the RPNGC has in place pro-active strategies for preventing violence against women and girls before it occurs, including by arranging staffing rosters and allocating resources to ensure that police are present and available at the times and places where women and girls are known to be particularly vulnerable to gender-based violence. The RPNGC should also work with the community to develop networks for reporting violence

against women and girls and for providing immediate protection to those at imminent risk of harm.

- Ensure that space is available at all police stations for women and girls reporting gender-based violence to provide a statement or other information to police in private and, if requested, to a female police officer.
- Ensure that all members of the RPNGC:
  - are trained in how to respond sensitively to women and girls reporting crimes of gender-based violence;
  - are aware of services available to female victims of gender-based violence and follow referral protocols accordingly;
  - do not treat referrals of female victims of gender-based violence to other agencies as an alternative to conducting a criminal investigation;
  - explain to women and girls the criminal justice process and their role in it but do not pressure women and girls to decide themselves whether charges should be laid.

If members of the RPNGC have been trained to respond in this way to victims of violence against women and girls but fail to implement the training, they should face disciplinary action.

- Ensure that all members of the RPNGC are instructed not to participate in or sanction in any way community compensation negotiations designed to shield perpetrators of violence against women and girls from facing criminal proceedings.
- Ensure that, where compensation agreements are reached and, as a result, the victim or other witnesses withdraw their cooperation from the criminal investigation or prosecution, criminal proceedings are not be discontinued until the victim has been informed of her rights and options, has had the opportunity to air her views and consider her options in private, and has been offered assistance to deal with threats or pressure which might be encountered if criminal proceedings continue.
- Ensure that where compensation agreements derail criminal proceedings, the possibility of bringing charges against those who brokered the agreement is explored, as is the usefulness of the power to compel witnesses to attend court.
- Ensure that the RPNGC treats seriously allegations of intimate partner violence within the police services, and that such allegations result in criminal investigations and, where there is sufficient evidence, prosecution of the officer involved.
- Ensure that the RPNGC takes seriously allegations of sexual harassment within the police services, that such allegations are dealt with promptly by internal complaints processes, and that policewomen are not discouraged from making complaints because of a fear of retaliation from their superiors.

***With respect to sentencing options for crimes of violence against women and girls, the Government of Papua New Guinea should:***

- Monitor and ensure that punishments imposed for crimes of violence against women and girls consistently reflect the serious nature of such crimes. Under no circumstances should crimes of violence against women and girls incur the death penalty, which is in itself a grave human rights violation.
- Ensure that rehabilitation programs for offenders convicted of violence against women and girls concentrate not just on vocational skills but also incorporate non-violent conflict



resolutions skills, communications skills and education on women's human rights.

- Ensure that, *where it would not jeopardise the safety of the victim*, alternatives to imprisonment are explored for less violent offenders, in particular where it would minimise hardship on an offender's family and is not opposed by the victim who has given her *free and informed consent*. In this regard, the Law Reform Commission recommendations for week-end detention should be explored, in addition to other community based correction initiatives already provided for in law. Community based corrections should utilise the counselling, mediation and awareness raising capacity of non-governmental organisations in the community.
- Ensure that where alternatives to imprisonment are not appropriate, social assistance and support is provided to women to ensure that they are not left destitute.

***Amnesty International calls on community leaders and religious leaders to:***

- Work to create an environment which supports women and girls and addresses violence, by: raising awareness about violence against women and girls; building community structures and processes to protect women from violence without compromising their rights and freedoms; providing assistance to survivors of violence; and ensuring that women human rights defenders are free to carry out their work.
- Ensure that women are treated as equal members of the community, including having equal participation in decision-making in local government and community structures;
- Ensure that religious bodies, traditional and informal authorities respect women's human rights and denounce, and desist from, any action that encourages or tolerates any form of violence against women and girls and any other violation of women's human rights;
- Encourage every individual to challenge negative, discriminatory or stereotypical images of women and girls and to work to combat attitudes that reinforce discrimination on grounds of gender or any other grounds and foster violence against women and girls;
- Calls on communities to work with those most affected by gender-based violence to develop and implement local strategies to confront such violence.

***Amnesty International calls on the international community, including international donors, to:***

- Express serious concern, directly in meetings with senior representatives of the government of Papua New Guinea and through public statements, about the prevalence of violence against women and girls in Papua New Guinea and the failure of the State to respond effectively to the human rights violations leading to, inherent in and following from such violence.
- Ensure that support provided to the Government of Papua New Guinea prioritises the effective implementation of CEDAW, at all levels of government, including by providing support to the Government of Papua New Guinea to implement the recommendations contained in this report and other reports listed above.
- Ensure that international donor assisted programs:
  - Recognise and approach violence against women and girls first and foremost as a human rights abuse;
  - encourage and facilitate equal participation of women in decision making;
  - do not re-enforce informal community power structures which marginalise women and girls or condone discrimination against women and girls; and
  - encourage and assist non-government organisations to work in partnership with the government without relieving the State of its responsibilities as the primary

duty bearer under international human rights law;

- Increase substantially support for human rights monitoring and accountability mechanisms, including by providing funding and technical assistance to:
  - the Internal Affairs Directorate of the RPNGC,
  - the Human Rights and Discrimination Unit at the Ombudsman's Commission,
  - the working group tasked with creating a National Human Rights Commission,
  - the proposed Office of Women's Development,
  - the Public Solicitor's Office, and
  - Village Court review and oversight mechanisms.

While support for training and awareness raising on women's human rights should be continued and encouraged – its effectiveness will be undermined as long as independent accountability mechanisms remain largely dysfunctional. It should not be forgotten that when independent and transparent mechanisms are used to hold people to account for human rights abuses, this in itself, results in meaningful awareness raising.

- Increase substantially support for programs designed to enhance the capacity of non-governmental organisations to:
  - Monitor government compliance with international human rights standards;
  - Investigate and document human rights violations;
  - Undertake targeted lobbying and advocacy to achieve human rights reforms or justice for human rights violations;
  - Utilise the court system to compel compliance with the National Constitution or to seek redress for the violation of rights protected under the Constitution;
  - Engage with international bodies, such as the CEDAW Committee and UN Special Mechanisms, to highlight and demand justice for human rights violations;
  - Critique and influence the allocation of government funding, to the extent that inadequate State resources are used as a justification for the Government's failure to address violence against women and girls.